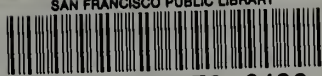


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18 MONDAY, MARCH 21, 1994
19 3:02 P.M.
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25 Reported by:
26

27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JOSEPH M. DOLPHIN, Member
Board of Governors
California Community Colleges

VISHWAS D. MORE, Member
Board of Governors
California Community Colleges

SENATOR DON ROGERS

JAY R. VARGAS, Director
Veterans Affairs

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CHAIRMAN LOCKYER: I guess Mr. Dolphin should be the first that we hear from.

Good afternoon.

MR. DOLPHIN: Good afternoon, Senator.

CHAIRMAN LOCKYER: Would you like to start, maybe, by just giving us a brief description of how you've been doing, whether you like this work, and why you're suited for it?

MR. DOLPHIN: Yes. It's very rewarding.

I've spend my entire lifetime running a business called -- my adult lifetime -- called Medevac, which is an ambulance and paramedic service. During the course of that business experience, I was fortunate to have my personnel trained by the community college system, EMTs and paramedics, and that was throughout California, five different counties, including San Mateo, Los Angeles, San Bernardino, San Diego, and community college system, and I believe now that I'm part of the Board of Governors, that I can contribute from the other side, especially in the vocational education area.

It's been a very rewarding experience, and I think my business sense has contributed to the management of the system.

CHAIRMAN LOCKYER: Do you, perhaps, want to share with us some thoughts about student fees, administrative perks, and things of that nature that seem to be the --

MR. DOLPHIN: Topics of the day?

CHAIRMAN LOCKYER: Yes, seem to be the topics that routinely come up during these recent weeks. Any thoughts about

1 where we're headed, what's happened, and where you wish to go in
2 the future?

3 MR. DOLPHIN: Well, hopefully we won't have to look
4 to the students in the future in such a degree. Student fees
5 have gone from \$6 to \$10 to \$13, and, you know, we're going to
6 have to ask people to pay for their education to some degree.

7 California community colleges are still a real
8 bargain. Unfortunately, putting the onus on the student when it
9 is such a small portion of the overall budget is not the
10 preferable way to finance. I hope that we can minimize student
11 increases in fees.

12 As far as administrative perks go, we really -- we
13 have nothing to do with the compensation of the people in the
14 Chancellor's office. That's handled through the Legislature.

15 CHAIRMAN LOCKYER: What are the alternatives to fee
16 increases?

17 MR. DOLPHIN: Better management. I think there's a
18 lot of room for improvement there.

19 The Commission on Innovation report will, hopefully,
20 give us a real leg up in terms of taking some of these
21 proposals, like distance education, and saving a considerable
22 amount of money in administrative overhead. I think that's the
23 wave of the future.

24 I think we can no longer continue to just throw money
25 at these problems. We have to find better ways to deliver the
26 product.

27 CHAIRMAN LOCKYER: I'm noting that that report from
28 the Commission on Innovation has indicated that perhaps

1 one-third of the new resources needed might come from
2 efficiencies. Are there any specific types of efficiencies that
3 you would contemplate?

4 MR. DOLPHIN: Well, it seems that probably the
5 biggest thing would be to minimize the overhead, the tremendous
6 amount of overhead.

7 I'm the Foreman of the Grand Jury in San Diego
8 County. We just issued a report on the community colleges in
9 San Diego County. The five different districts there could
10 alleviate a tremendous amount of expense if they were to join
11 together in some of these grant proposals and other things, and
12 not compete for students on that level. We think there's a
13 tremendous amount of administrative overhead that can be cut
14 out.

15 So, I would look first in that area in terms of
16 budgetary savings. I think that's where the most -- I think the
17 future in terms of capital outlay is going to be lowered because
18 of some of the other proposals, like distance education, and
19 that can be used in the services as well.

20 CHAIRMAN LOCKYER: Anything that would affect class
21 sizes, or staff workload, or anything in the domain, or are they
22 mostly the purchasing and --

23 MR. DOLPHIN: Many of those issues that you just
24 mentioned are local issues, and the Board of Governors just
25 basically does not get involved in local decision making.

26 CHAIRMAN LOCKYER: So you don't feel like you have a
27 role in that respect?

28 MR. DOLPHIN: Not other than basic general

1 guidelines, Senator. I don't think that we should be running
2 each individual district.

3 CHAIRMAN LOCKYER: I note that six years ago,
4 legislation was passed -- it happened to be Assembly Bill 1725
5 -- which established this long-term framework for community
6 college reforms in a whole variety of areas.

7 Is there any discussion among your colleagues about
8 how to implement those reforms? Is it gone, or is it still
9 alive?

10 MR. DOLPHIN: We have a meeting -- in each of our
11 meetings devoted to legislation, we have a legislative report,
12 and we're constantly --

13 CHAIRMAN LOCKYER: This was passed six years ago.

14 MR. DOLPHIN: I wasn't here six year ago.

15 CHAIRMAN LOCKYER: It's before your time, but what
16 I'm wondering is if that law is in any way before you,
17 discussed, and --

18 MR. DOLPHIN: Are you talking about the consultation
19 process?

20 CHAIRMAN LOCKYER: AB 1725 talks about governance,
21 and finance --

22 MR. DOLPHIN: Yes, we're briefed on that -- on the
23 law, and our role as it relates to the districts, and shared
24 governance, and those issues, and we talk about that a lot.

25 But as far as I know, there has been no proposal to
26 update that law.

27 CHAIRMAN LOCKYER: So that discussion, though, is
28 alive?

1 MR. DOLPHIN: It's ongoing, yes. We live under those
2 regulations, Senator.

3 CHAIRMAN LOCKYER: Tell me about the "60 Minutes."
4 We're going back almost ten years.

5 What were you doing to help solve the homeless
6 problem?

7 MR. DOLPHIN: I was involved with that. I was
8 Chairman of the Salvation Army in San Diego County, and Judge
9 Coates, who's a local advocate for the homeless, organized a
10 group of twelve individuals from the Mayor's Task Force on the
11 Homeless to become homeless for 24 hours.

12 We went down to San Diego. We went downtown, with no
13 money, and tried to see what kind of experience it was to
14 actually live on the streets as a homeless person.

15 A few years later, "60 Minutes" decided to do a story
16 about that experience, and about Father Joe Carroll, who's one
17 of our leading homeless advocates in San Diego. And so, I was a
18 part of that show, the program.

19 CHAIRMAN LOCKYER: What have you done to catch Milton
20 Friedman's eye?

21 MR. DOLPHIN: I've -- I was a part of the -- of his
22 book, Free to Choose, I believe it was, and his T.V. series on
23 PBS because I ran -- when I was running the San Mateo County
24 paramedic program, I instituted some private sector initiatives
25 where paramedics did some of the tasks that physicians
26 previously had done. It's kind of changed the profession.

27 CHAIRMAN LOCKYER: Senators Ayala or Craven, any
28 questions?

1 SENATOR CRAVEN: I have no questions, Mr. President,
2 but I've had the good fortune of knowing Joe Dolphin for some
3 years. Back in the days when I was with the County of San
4 Diego, he was very active even in those days.

5 I recall his activity with the Y in San Diego, and
6 also small-business. It seems to me at that time, he was --
7 perhaps it's not right to say he was the spokesman for that area
8 of commercial aspect of our life -- but he was very active in
9 the small business group. And I suppose, in no small measure,
10 too, the fact that he himself began as a small businessman with
11 the service, ambulance service, which he had, and he changed
12 that. He no longer is a small businessman; he has made a big
13 business of it.

14 It was due, I think, to his own doggedness, and his
15 work ethic, and the fact that he took time, no matter how busy
16 he was, to go out and help someone else.

17 I've always respected that about Joe, or anyone. But
18 since I know him, I feel very, very happy to have him here
19 today, and when the time is appropriate, move his confirmation.

20 CHAIRMAN LOCKYER: Senator Ayala.

21 SENATOR AYALA: Mr. Dolphin, I guess you have a lot
22 of issues to face in that responsibility that you have today.

23 But I get more letters, and I'd like to have you tell
24 me how to respond to them, that the Board of Governors have
25 raised the tuition fees for the students, and passed it on to
26 the administrators in salaries, increased salaries.

27 The perception is that you're penalizing the students
28 in order that the administrators get the enhancement on their

1 salaries.

2 Can you tell the rationale behind what the Board did
3 or is doing every year?

4 MR. DOLPHIN: Certainly I can, Senator.

5 First of all, those letters should, I think, mostly
6 be directed at the University system and not at the community
7 colleges.

8 We have not raised salaries of the Chancellor's
9 office. In fact, I think there's even a freeze on the
10 Chancellor's office.

11 As far as the fees, the student fees go, we're kind
12 of the victim. And I don't want to lay the onus on you, but the
13 Governor and the Legislature set those fees. We just recommend
14 what we think is appropriate and then go along with whatever the
15 Legislature and the Governor decides is the appropriate amount.

16 The student fee issue is one that's close to my heart
17 because my daughter goes to Bakersfield. She is not being
18 subsidized by her father any longer now that she's an adult, and
19 these fees do cost a lot of money for her and her family. I'm
20 very sensitive to that.

21 So, I would hope that we could hold the student fees
22 within reason. I think they've gone up quite a bit, and
23 hopefully, we won't have to make a big move on those in the
24 future.

25 But I think we ought to take a look at the University
26 system when we talk about fee increases and salaries for
27 administrators before we look at the community college system,
28 Senator.

1 SENATOR AYALA: I think you're right. Most of the
2 letters were from the four-year colleges, although I have three
3 or four community colleges in my district. They also joined the
4 crowd, I guess, to be there. But mostly, they're directed at
5 the Regents, and upset with them.

6 The only thing I could do was to tell them that I had
7 no jurisdiction over that except when we vote on members, and I
8 will remember to help them as much as I could. This way, I
9 don't intend to vote for any appointee to the Regents that has
10 voted to raise the students' tuition and, at the same time,
11 passed that on to the administration. I think it should have
12 been tuition fees raised, and hold the line to show that we are
13 having a problem.

14 But it appears as if you penalize the students,
15 making it harder for students from the lower income families to
16 attend, so they could pass that on to the administration, which
17 didn't look good at all.

18 You're right. They're mostly from the four-year
19 colleges we got the opposition.

20 MR. DOLPHIN: We're very concerned about low-income
21 in the community college system, because a lot of the people
22 that we get in our system are the ones that can't afford to go
23 to the other systems.

24 What we are -- whatever student increases in fees
25 there be, we hope that there will be aid packages that will
26 minimize that impact on the low-income student. That's what our
27 goal is.

28 SENATOR AYALA: Tuition increases are a must these

1 days. Education costs more.

2 MR. DOLPHIN: That's right.

3 SENATOR AYALA: And these students must bear their
4 burden of the costs of education provided they get jobs or
5 loans.

6 But to turn around and then enhance the salaries of
7 administrators, that didn't look too good to the people out
8 there, and I'm very concerned about that.

9 MR. DOLPHIN: Well, our Chancellor hasn't had a raise
10 in a long time. He understands that we just don't have the
11 resources, and we can't be raising student fees. And he's here
12 today. He could understand what we're talking about.

13 I think all the members of the Board of Governors
14 share your concern, Senator.

15 SENATOR AYALA: Thank you.

16 CHAIRMAN LOCKYER: Do you consider it part of your
17 job description to be active in expressing opinions to the
18 Governor, to the Legislature, and the general public about the
19 wisdom, or lack of wisdom, of any particular fee proposal?

20 I'm not trying to suggest you ought to have a
21 particular view, but is it part of your role to be involved in
22 that public debate?

23 MR. DOLPHIN: Senator, it most certainly is.

24 I'm a free thinker, and when I served Governor Brown
25 as Chairman of his Small Business Committee, and President
26 Carter as Vice Chairman of the Resolution Committee of the White
27 House Conference of Small Business, and Governor Reagan, I told
28 them my feelings whether they like it or not, and I will tell

1 you the same thing, Senator.

2 CHAIRMAN LOCKYER: That's a good quality. We
3 encourage it.

4 MR. DOLPHIN: Thank you.

5 CHAIRMAN LOCKYER: Let me ask, there's been this
6 debate about Cal grant A and B, and whether there needs to be
7 more money for scholarships in the need or merit universe.

8 Do you have any particular view about that that would
9 help us to --

10 MR. DOLPHIN: I really don't know enough about it to
11 give you an educated comment.

12 CHAIRMAN LOCKYER: That's fair.

13 Getting more to your work history, we're now
14 anticipating a lot of new federal law, and program and money,
15 relating to job training.

16 There seems to be an occasional criticism offered up
17 of the community colleges that they tend to not provide nursing,
18 and other such vocational training, because of the cost. But
19 yet, there's a great need for those jobs, or a demand for those
20 jobs.

21 Do you have any sense of whether the system, I know
22 you have a lot of, again, individual campuses that are making
23 the curriculum decisions, not yourself, but any sense of how
24 you'd like to put the new federal act to work, and what it might
25 mean to the college system?

26 MR. DOLPHIN: Yes, I do.

27 First of all, my daughter is a nursing student at
28 Bakersfield. My second daughter is a registered nurse, so I

1 have a little background in nursing.

2 I think that when you have a specialized course, that
3 it ought to be available on a regional basis instead of each
4 campus competing for minimum students. If there's enough
5 students to put it on at various campuses, that's all right.
6 But if there's -- if there has to be a shared course between
7 contiguous districts in order to make a class, I think that's
8 perfectly appropriate as long as the travel distance is not too
9 outrageous for the student.

10 I think that we should offer those kind of courses
11 throughout the state so that there will be trained professional
12 nurses, and other kinds of people, access to that program
13 throughout the state.

14 CHAIRMAN LOCKYER: Dental assistant, some of those.

15 MR. DOLPHIN: Yes. I think it's very appropriate to
16 do that.

17 CHAIRMAN LOCKYER: Let me inquire if there's anyone
18 present who would wish to testify with respect to this
19 nomination?

20 Senator Craven.

21 SENATOR CRAVEN: Mr. Chairman, I'd like to move the
22 nomination to the Floor, please.

23 CHAIRMAN LOCKYER: Call the roll, please.

24 SECRETARY WEBB: Senator Ayala.

25 SENATOR AYALA: Aye.

26 SECRETARY WEBB: Ayala Aye. Senator Beverly.
27 Senator Petris.

28 SENATOR PETRIS: Aye.

1 SECRETARY WEBB: Petris Aye. Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Craven Aye. Senator Lockyer.

4 CHAIRMAN LOCKYER: Aye.

5 MR. DOLPHIN: Thank you.

6 CHAIRMAN LOCKYER: Good luck.

7 SENATOR CRAVEN: Mr. Chairman, could we hold the roll
8 open? I think Senator Beverly would like to vote on this issue.

9 CHAIRMAN LOCKYER: Certainly.

10 Our next one again for the community college system
11 is Vishwas More.

12 Good afternoon.

13 MR. MORE: Good afternoon, Senator.

14 CHAIRMAN LOCKYER: You've been serving for a while on
15 the Board.

16 MR. MORE: Right.

17 CHAIRMAN LOCKYER: How do you like it?

18 MR. MORE: Excellent. I enjoy it very much.

19 CHAIRMAN LOCKYER: Do you? How much time does it
20 take?

21 MR. MORE: For me, since I have retired now, I am
22 making that as my full-time job.

23 CHAIRMAN LOCKYER: So it's every day.

24 MR. MORE: Every day.

25 CHAIRMAN LOCKYER: Lots of hours?

26 MR. MORE: All the time. Whatever is needed.

27 CHAIRMAN LOCKYER: What's been the hardest decision
28 you've had to make so far?

1 MR. MORE: Well, hardest decision, since we are the
2 State of California, the crisis on the budget and the money
3 system, and more worry is how we going to make the system work
4 efficiently, properly, and the ethnic community growing in the
5 State of California, the number of students growing in
6 California, so the worry is how are we going to handle this
7 future, kids coming to our schools. That's the major worry that
8 I have right now.

9 CHAIRMAN LOCKYER: Do you have any sense of how
10 you're going to balance future budgets, or recommend --

11 MR. MORE: Well, my background is engineering. And I
12 think I am -- if I am not wrong, I am -- I might be the first
13 engineer on the Board.

14 CHAIRMAN LOCKYER: Pardon?

15 MR. MORE: I might be the first engineer on the
16 Board.

17 So, I have taken a a tremendous interest in finance
18 and budget, and looking into the system, how the system is
19 working, understanding the system, and trying to find out how
20 efficiently we can work. That's one of the things I am doing
21 right now.

22 I got together with the State Architect and tried to
23 get together with them, and reduce the process of approval that
24 we have, that we go through on a capital project. So, we have
25 come out with a tremendous process which is starting next month,
26 and I think we can do very surprise reduction in time in
27 approval process without -- with abiding all the rules and
28 regulations.

1 I think this is a good thing, that interacting with
2 the other agencies, we've been able to do that with our
3 Chancellor's staff and myself; been very successful to do that.

4 I'm looking into more items of that type, that type:
5 how can we improve; how can we cut down the bureaucratic time
6 that it takes and reduce the process of approval. And that's
7 what we are trying to do that.

8 It's working beautifully, and there is a lot of help
9 from the other departments, and that's happening.

10 CHAIRMAN LOCKYER: You worked in some big
11 bureaucracies in the past.

12 MR. MORE: That's right, correct.

13 CHAIRMAN LOCKYER: Is it different?

14 MR. MORE: No, not different.

15 CHAIRMAN LOCKYER: Same kind of culture?

16 MR. MORE: Same kind, everything, anyplace, including
17 where I came from, India, same situation. People are same all
18 over.

19 We got to make it work and reduce the best way we
20 can, and make it easier for the students. Bottom line is
21 students. That's my commitment.

22 CHAIRMAN LOCKYER: Questions from Members? Senator
23 Petris.

24 SENATOR PETRIS: I'm pleased to hear your description
25 of the bottom line.

26 But I'm sad to report that from 1991-2 year to
27 1993-4, two years' budget, we lost 64,749 bottom lines. That's
28 how many students dropped out because, we think, because of

1 increase in fees. This is at a time when we were trying,
2 through the Vasconcellos legislation and programs, to more or
3 less guarantee community college students, if they made the
4 grade, they would have a place either at Cal. State or UC. But
5 there's an awful lot of them that aren't going to have such a
6 place. Does that trouble you?

7 MR. MORE: It does trouble me a lot.

8 SENATOR PETRIS: During your watch and mine over
9 here, we're losing this many students. The number we're given
10 says that's equivalent to three entire UC campuses. That's
11 debilitating to the whole system.

12 MR. MORE: Yes, I agree with you.

13 SENATOR PETRIS: Can you comment on that?

14 MR. MORE: Yes. Senator, that bothers me a lot.

15 I came to this country back as a young student with
16 \$60, and I went to University of Michigan, Chicago, Stanford and
17 UC Berkeley. I struggled. I worked hard, and it bothered me,
18 and it's my commitment.

19 The country helped me, everybody helped me, and it's
20 my commitment now to put something back into the educational
21 system.

22 So, I'm trying to find out what best way some of the
23 change that we need to make sure we are not wasting. And that's
24 what I am trying to look into in all the capital outlay, for
25 anything, that we want to make sure whatever money we get got to
26 go to the bottom, to the school and the students.

27 So, I have to find out, and we all together, we find
28 out on the Board, the best way we can get maximum number of

1 students and educate them, and that's my goal.

2 SENATOR PETRIS: Well, you know, from the history of
3 the institution, you must have read because you weren't here in
4 those days, that it started out with no tuition at all at the
5 junior college level.

6 MR. MORE: That's true.

7 SENATOR PETRIS: And that was really our pride and
8 joy for many years. That was a secret that other states had not
9 discovered. In fact, there probably aren't any other states in
10 the Union today that have a system like that, with no tuition.

11 Now we're charging tuition. Instead of them
12 imitating us, we're imitating them.

13 MR. MORE: That's right.

14 SENATOR PETRIS: The underlying premise was that the
15 responsibility for funding our higher education system, as well
16 as K-12, was really up to the public. And during all those
17 years they enthusiastically supported it. I don't remember we
18 ever having a lot of complaints saying, "I'm sick and tired of
19 paying so those other kids can go to University, or Cal. State,
20 or the community college."

21 Now we don't seem to have that kind of enthusiasm. I
22 know you can save money by being more efficient, but I'm very
23 skeptical about how much in the total scheme of things.

24 It seems to me we ought to go back to the spirit of
25 saying, "Hey, it's up to all of us," whether we have children in
26 school or not, and whether we went to school or not, it's up to
27 all of us for the benefit of the nation to minimize the heavy
28 finance burden on the students so they can concentrate on their

1 studies.

2 Do you agree with that?

3 MR. MORE: I agree very strongly; accept that very
4 much, very strongly.

5 I think I feel the whole economy has a lot to do with
6 it also, especially State of California. I think if their
7 economy is good, there is more money coming, we don't complain
8 about small items.

9 But right now, when everything is tight, and I think
10 once we get the economy going, everything will be healthy,
11 stronger. And automatically, I think, will be much more
12 comfortable, but we've got to get going in all directions.

13 And students are much more important. We've got to
14 educate them.

15 SENATOR PETRIS: When the economy comes back to
16 normal, do you think there'll be a movement to eliminate the
17 fees, or at least reduce them as much as possible?

18 MR. MORE: We should take that definite priority in
19 education, absolutely. I believe education should be the first
20 criteria, first important thing.

21 SENATOR PETRIS: How long is your term on the Board?

22 MR. MORE: If you confirm me, it will be another six
23 years.

24 SENATOR PETRIS: Hopefully, that'll be past the end
25 of the recession.

26 MR. MORE: I hope it's next year. I'd like to see it
27 happen sooner.

28 SENATOR PETRIS: I'd like to see you take the lead in

1 reducing the burden on students.

2 MR. MORE: Definitely. That's my goal, and that's
3 what my commitment is.

4 SENATOR PETRIS: Thank you.

5 MR. MORE: Thank you.

6 SENATOR AYALA: Mr. More, last year the fees were
7 increased from \$10 per unit to \$13.

8 MR. MORE: Right.

9 SENATOR AYALA: This year, the Governor's budget is
10 calling that it go to \$20 --

11 MR. MORE: Right.

12 SENATOR AYALA: -- per unit.

13 Now, in this same period of time, we experienced the
14 nation's largest decline in enrollment in our community
15 colleges.

16 Can you tell us why you think that occurred, the
17 tremendous decline in enrollment?

18 MR. MORE: Well, I feel any amount of money, the fee
19 that we are increasing, there are a lot of students in the State
20 of California can't afford even certain small amount of
21 increases.

22 And I think definitely we have to worry about the
23 ethnic community, our poor students, our poor parents, those who
24 cannot afford it. I think definitely it does hurt them, any
25 amount of money. So, that is an effect on that.

26 SENATOR AYALA: Do you feel that the decline will
27 continue if we raise it from \$13 to \$20 per unit?

28 MR. MORE: I presume it will.

1 SENATOR AYALA: You think it will.

2 MR. MORE: I think it will.

3 SENATOR AYALA: We're defeating the purpose; aren't
4 we?

5 MR. MORE: Well, that's what's happening. And I
6 think we all of us have to work hard together, some way or the
7 other, to stop that roll, and I think we all together, working
8 together, that we can stop that.

9 We have to do it. We have no alternative. This is
10 one of the best states, and we've got to maintain that state and
11 students.

12 SENATOR AYALA: Whenever we raise the fees and
13 tuition, we're admitting that some people can't attend those
14 higher elevated colleges, and higher education, because they
15 can't afford it, and that defeats the purpose of having these
16 institutions.

17 MR. MORE: Agreed. What we have said before --

18 SENATOR AYALA: Not that they're only there for the
19 poor, but they're not able to participate.

20 MR. MORE: No, we have to find out some better
21 solution, working all together.

22 SENATOR AYALA: Thank you.

23 MR. MORE: Thank you.

24 CHAIRMAN LOCKYER: Sir, I guess the history has been
25 that instructional costs were borne by the General Fund, and
26 fees paid for kind of auxiliary services. Now that's a practice
27 or tradition that we're losing.

28 It sounds like, from your comments, that was a

1 philosophy that you approved of before the fee build up for
2 instructional needs.

3 I don't want to misstate your position at all, but is
4 that --

5 MR. MORE: No, I don't think that's correct, no.

6 CHAIRMAN LOCKYER: Is there anyone present who would
7 wish to comment?

8 MR. MORE: My daughter is here, if you want to talk
9 to her.

10 CHAIRMAN LOCKYER: Is she going to say nice things
11 about you?

12 MR. MORE: I hope so. She said, "I know you better."

13 By the way, all of my children, four of them, are
14 products of community colleges, my wife also, so we are a
15 product of community colleges.

16 CHAIRMAN LOCKYER: Are there other questions from
17 Committee Members?

18 Let me ask one more time, was there a vote that you
19 had to cast that you struggled with, that was a hard vote to
20 cast during your tenure on the Board? Is there one that you can
21 recall, reflecting back, that was difficult for you?

22 MR. MORE: You mean in the last 6-8 months since I've
23 been -- no, I think we've been -- the Board is very active and
24 together. On the issues we operate together, so there has been
25 no -- nothing that has struggled me.

26 CHAIRMAN LOCKYER: Was there any controversy before
27 the Board that caused a split vote at all in the last --

28 MR. MORE: Not to my remembrance. We've been fairly

1 consistent, all of us.

2 CHAIRMAN LOCKYER: Okay.

3 SENATOR CRAVEN: Move.

4 CHAIRMAN LOCKYER: Senator Craven moves
5 recommendation.

6 Call the roll.

7 SECRETARY WEBB: Senator Ayala.

8 SENATOR AYALA: Aye.

9 SECRETARY WEBB: Ayala Aye. Senator Beverly.

10 SENATOR BEVERLY: Aye.

11 SECRETARY WEBB: Beverly Aye. Senator Petris.

12 SENATOR PETRIS: Aye.

13 SECRETARY WEBB: Petris Aye. Senator Craven.

14 SENATOR CRAVEN: Aye.

15 SECRETARY WEBB: Craven Aye. Senator Lockyer.

16 CHAIRMAN LOCKYER: Aye.

17 SECRETARY WEBB: Five to zero.

18 MR. MORE: Thank you.

19 CHAIRMAN LOCKYER: We have kept the other item on
20 call so that Senator Beverly might record a vote. Lift the roll
21 call.

22 SENATOR BEVERLY: Thank you. I was in the
23 Appropriations Committee.

24 SECRETARY WEBB: Senator Beverly.

25 SENATOR BEVERLY: Aye.

26 SECRETARY WEBB: Beverly Aye. Five to zero.

27 [Thereupon the Senate Rules

28 Committee acted upon legislative

1 agenda items.]

2 CHAIRMAN LOCKYER: Colonel Vargas, I think, is our
3 next, and Senator General Rogers.

4 SENATOR ROGERS: Thank you for the promotion.

5 Of course, I'd have to find out which branch of
6 service you're talking about. If it's anything other than --

7 CHAIRMAN LOCKYER: Here you want to be a Marine.

8 SENATOR ROGERS: I'll accept that.

9 CHAIRMAN LOCKYER: It's at least two-fifths of the
10 Committee, and so that's a good start.

11 SENATOR ROGERS: I'm glad you made that point for me,
12 Mr. Chairman.

13 I'm here on behalf of Colonel Vargas. As you know,
14 he's up for confirmation as the Director of the California
15 Veterans Department, or Department of Veterans Affairs.

16 I'm not going to give a long testimony, but I just
17 want to remind the Members of a couple of things.

18 First of all, Colonel Vargas hit the ground running
19 whenever he came in as Director. He immediately settled all of
20 the claims and the problems regarding the Oakland fire in
21 Senator Petris's district. All of those veterans' claims have
22 been settled. He did that very quickly.

23 Another thing he did, you know, we keep hearing,
24 well, certain groups speak. They say, "We speak for all the
25 veterans in California."

26 Well, we found out that's not true. They may think
27 they do, but they don't. We've got a lot of different Veterans
28 Affairs, and they really can only speak sometimes for a very few

1 members. So, he's been kind of clearing the air on that. He's
2 going around, meeting with all of the different veterans'
3 organizations and saying, "Now, don't claim something that you
4 can't really deliver. If you do have agreement or something,
5 that's fine, but don't claim you speak for all the veterans if
6 you don't really do that."

7 That's been a help, I know, to me. In fact, just as
8 a show of support, we have in the audience here today in the
9 back all of the State Commanders of all the veterans'
10 organizations in the State of California who are here to express
11 their support for the confirmation of Colonel Vargas.

12 Just a couple other things and I'll be through.

13 He's also directed that all divisions within his
14 department to improve their responsiveness to the needs of women
15 veterans, which sometimes we tend to neglect. However, we do
16 have a large contingent of women veterans in the state.

17 He's been very helpful in establishing the second
18 Veterans Home in Southern California. In fact, we have the
19 first one of several, which will be in Barstow, and we're going
20 to lay the cornerstone for that new Veterans Home. We'll take
21 care of some 400 clients, and that will be on May the 21st of
22 this year, which just happens to be Armed Forces Day. I
23 understand that there's going to be a lot of us there. Colonel
24 Vargas will be there, and we're looking forward to a big day.
25 But that's going to be the beginning of a second Veterans Home,
26 this one in Southern California, in addition to the one in
27 Yountville.

28 There are a lot of other things here. I won't take

1 up your time, but one other thing, at the request of Assemblyman
2 Tom Connolly, who is the Chairman of the Subcommittee for
3 Veterans on the Assembly side, he could not be here today. He
4 asked me to read -- and I'm not going to read all of it.

5 CHAIRMAN LOCKYER: We have a copy.

6 SENATOR ROGERS: You have a copy of it, okay. That's
7 fine. But he is expressing his support for Colonel Vargas.

8 So with that, I'm happy to be here to offer also my
9 support, and I didn't -- Jay was a little hesitant. He said,
10 "You know, Don, should I come up there with you or stay in
11 back?" I said, "No, come on up. I'll try not to embarrass you
12 too much."

13 He's a very modest man, but he has an outstanding
14 record. He's done a good job since he became the Director, and
15 I for one, as Chairman of the Veterans Committee in the Senate,
16 would like to see him confirmed and allow him to continue doing
17 the good job that he's been doing.

18 So with that, Jay, I know they've got some questions
19 for you, so I wish you well.

20 CHAIRMAN LOCKYER: Thank you, Senator Rogers. You've
21 done a good job.

22 COL. VARGAS: Thank you, sir.

23 CHAIRMAN LOCKYER: Maybe, since Senator Rogers had
24 commented on the new Veterans Home, you could comment for us on
25 the recommendations of the Legislative Analyst and others who've
26 indicated that there may not be as great a need for those
27 facilities as we once thought. That is, empty beds at
28 Yountville, and so on.

1 I understand there's a geographic issue, but what
2 about the fiscal one? Can you provide some information or
3 specifics on that?

4 COL. VARGAS: Let me start -- I hope I don't lose too
5 many friends on this response with the Legislative Analyst, but
6 there is a tremendous need for veterans homes in Southern
7 California.

8 The recent census that was taken, by the year 2000,
9 there's going to be 1.2 million veterans over the age of 60.
10 Approximately 700,000 of those will be in Southern California,
11 the remaining will be in Northern California. So, there's
12 always going to be a demand for veterans to seek membership into
13 Yountville and the future homes in Southern California.

14 As you know, in Yountville, once the construction is
15 completed, will have a capacity for 1600, and our hope is to
16 complete the four homes in Southern California, which will house
17 another 1600 veterans.

18 I have received some information where people are
19 concerned about waiting lists into Yountville and into the
20 future homes in Southern California. Well, right now in
21 Yountville, we have a waiting list of 400.

22 But what has constrained Captain Reber, Mike Reber,
23 the Administrator out there, is that we're only budgeted with
24 General Funding for 1125. So, rather than cause any anxiety in
25 some of our veterans throughout the State of California and
26 saying, you know, "Prepare. Pack your sea bag, sell your home;
27 drive up here," it's just not worth it at this time.

28 And if we were to, in Yountville's case, to

1 completely go beyond the 1125, I would have to come forth to the
2 legislation [sic] and request for millions of dollars to push
3 that program into full speed.

4 Shifting to Barstow, the first home that's going to
5 go into that area, I have never -- I've been out there twice now
6 since I've been here in the eight months, three times -- I've
7 never seen a community so anxious to get the Veterans Home into
8 their city. It's going to be -- it will house 400. It will
9 have 220 beds that will house the domiciliary type veterans, and
10 they're still fairly mobile and can still go around on the town,
11 and travel throughout the state. And there will be the
12 intermediate -- 120 intermediate caring facilities for veterans.
13 The additional will be skilled nursing types.

14 The Home is beautiful. The design has been put
15 together by a San Diego firm, Larry Sillman, Incorporation, and
16 it's a beautiful Home of which any room that's going to be built
17 into that facility can go from domiciliary into skilled nursing.
18 So, it's going to be -- it definitely will -- I'm not worried
19 about filling Barstow.

20 I do -- I'm only one member of the Commission and the
21 future task force that hopes to push on with the other three
22 homes. And I would -- and it's Jay Vargas talking -- I would
23 like to see two coastal site homes, and two inland type homes
24 put in Southern California. Why? Because I think it would give
25 flexibility to a veteran who's been out at the desert and would
26 like to come into San Diego, for an example, or vice-versa.
27 Somebody might like to go out to the desert. And it gives us
28 tremendous flexibility.

1 And we can move these veterans around. We're going
2 to have our vehicles to put these -- move these people around if
3 they so desire.

4 The reason that I would like to see specifically a
5 home go into San Diego, California, I'll say the University of
6 Irvine, for an example, they would like us to come in and take a
7 look -- I have another flight here shortly -- to get to chat
8 with those people. They're open arms and would like to have one
9 of our homes on their campus because they're going to build a
10 School of Medicine there, for example, and they'd like to have
11 the Veterans Home there nearby where they could study aging,
12 like we're doing presently at Yountville.

13 But I personally believe that two homes along the
14 coastal areas, specifically San Diego and UC Irvine, or
15 somewhere in the L.A. area, would be a tremendous asset to the
16 communities. I think people could come and see Uncle Joe, or
17 Uncle Jay, for an example, if I happened to be in the home in
18 San Diego because there's a lot of things to do in San Diego.

19 A lot of folks feel that there's -- why the high --
20 not the high desert, but out in the desert area? It's healthy;
21 it's clean air. Both communities that we have looked at, like
22 Barstow, of course -- I hate to use the word "bonkers", but they
23 have gone bonkers over this project. They want this home so
24 bad, and you can't go anywhere in that city without people
25 hearing, or you'll hear people talk about the homes.

26 Lancaster is another site that we've looked at, and
27 it has the same atmosphere as Barstow. The community is just
28 tremendously behind this project, hoping that they will get it.

1 And I'll say "hoping that they will get it", because only one
2 site has been picked and agreed upon, and it's funded.

3 We have received funding from the U.S. DVA, and
4 Public Works has come through with the funding, the state
5 funding, for the Barstow program. It's the only one that has
6 been totally funded at this time.

7 I'm not concerned about filling it, sir. I'll fill
8 them all.

9 CHAIRMAN LOCKYER: Colonel, you have quite a
10 distinguished record that I want to just acknowledge.

11 COL. VARGAS: I'm a lucky person to be here, sir. I
12 really am.

13 CHAIRMAN LOCKYER: I note in looking at your
14 experience, that you talk about during the time that you were
15 headquartered in Japan, that you significantly improved the
16 readiness, effectiveness and efficiency of your unit.

17 What would you do with respect to your current
18 responsibilities that might improve the efficiency and readiness
19 of the Department? Do you have any thoughts about that for us?

20 COL. VARGAS: I do. Already I have set -- I
21 personally believe that I've set the Department on course for
22 the 21st Century. I've come up with eleven objectives in which
23 we have -- where our team, my people, are working to accomplish
24 and to find solutions to.

25 I'm not bragging; it's a fact. Other states have
26 caught hold of these eleven objectives, and now are
27 incorporating them into their departments, veterans departments.

28 They're good, solid objectives. We're working very

1 hard with task forces to reach a lot of these -- most of the
2 objectives. It's going to take some time to accomplish them
3 all. Like, I've given everyone until next Saturday.

4 But the bottom line is putting veterans first.
5 That's the motto of our Department, and I came up with that
6 since I've come aboard, and believe it or not, it is the
7 national motto today. No bragging, a fact. Other states are
8 adopting it.

9 I think if we can all get on the same frequency in
10 putting veterans first, that this country will be in great
11 shape, and so will the veterans.

12 My past experiences as to pushing the Department, I
13 have shaken it up a little bit. Some people have left. Some
14 people have been asked to leave.

15 But I wanted to make it the best serving agency for
16 veterans in the United States of America.

17 CHAIRMAN LOCKYER: A worthy objective.

18 Other questions? Senator Petris.

19 SENATOR PETRIS: Well, first I want to commend the
20 Colonel. I met him shortly after he was appointed, while I was
21 attending -- I want everybody to notice this -- a meeting of an
22 American Legion Post in San Francisco. So, I want all you other
23 veterans to make note of that.

24 We had a good talk when we first met, and I've talked
25 to him since.

26 I wanted to congratulate you on the way you turned
27 the thing around on the fire situation in Oakland. Prior to
28 your arrival, I was having a running battle, as you know, with

1 the Department. They just didn't seem to want to move. They
2 acted like a commercial insurance company, resisted the claims
3 of veterans. There were seven or eight veterans who lost their
4 homes. They were giving them a awful bad time.

5 The Colonel came in and turned that around right away
6 quick.

7 And then I've learned that you did the same thing at
8 the earthquake, that your Department really moved in quickly and
9 found out, you know, when the veterans applied, and processed
10 their claims very quickly. I want to commend for that, too.

11 COL. VARGAS: Thank you, sir.

12 SENATOR PETRIS: I had one question on the homeless
13 problem in the Bay Area. That's where I live. I can't say much
14 about what's happening in other parts of this state, but very
15 frequently, when some local station does a commentary, or runs a
16 program, or some interviews, about the plight of the homeless,
17 it seems that either there's a very high percentage of veterans,
18 or they seek out those who are veterans. It gives the
19 impression to me, as a viewer at home, that there's an awful lot
20 of veterans out there who are in the homeless category.

21 Now, probably the answer is somewhere in between
22 those two. Is the Department trying to help homeless veterans
23 get some housing?

24 I know that they don't qualify for our housing
25 program, because they don't have any money, but is there
26 anything that the Department is doing or can do?

27 COL. VARGAS: We're participating in the, of course,
28 the stand-downs that are conducted throughout the state. We've

1 gone to Ventura, San Diego, San Francisco, right here in
2 Sacramento, where we have brought -- and we've participated.
3 It's really run by the Department; EDD really runs that, but we
4 took a strong part of that in bringing in veterans to either
5 house them, clean them up, work on their dental, medical, et
6 cetera.

7 On the homeless part, it's kind of difficult for my
8 Department to resolve or solve that one, but I have an idea.
9 And I have spoken to several Senators and Assemblymen, and
10 recently back on the 24th and 25th of February, this idea was
11 taken back to Senator -- excuse me, to Secretary Jesse Brown's
12 conference that he was having back there on homeless. Because I
13 have learned that one out of three homeless are veterans.

14 SENATOR PETRIS: Is it that high?

15 COL. VARGAS: That's how high it is.

16 The proposal that I made, and I still feel that the
17 Department of EDD could take the lead on this because they do
18 get some federal money, whereas I don't, but I would like to see
19 us, the State of California, take one of our bases that we have
20 recently closed, and possibly bring in our homeless veterans
21 into that base. Bring in some of the corporations, their
22 teaching teams, their mobile teams that could teach people how
23 to be a mechanic, how to run a golf course, how to run a tennis
24 club, how to run a bowling alley. And bring these people --
25 there's homes on some of these bases; there's recreational
26 facilities aboard those bases.

27 I believe big corporations could come in and assist
28 the state in training these people. And once they're trained,

1 we can have them go out and assist them in getting a job. And
2 the first couple of pay checks they have, they can refurbish or
3 pay back to the site or to the state, if you want.

4 It's just an idea that I have for the homeless.

5 I'm like the Senator. I cried at the stand-down we
6 had in Sacramento because coming through the soup line was one
7 of the guys I fought with in Vietnam. I couldn't believe that
8 he was -- he was a first sergeant in Vietnam, and he had lost
9 everything.

10 It's just an idea, but I think it can work. Rather
11 than having transition teams fly all over the state and try to
12 teach people how to learn a new employment, I think we could
13 take advantage of one of these bases and bring these people in,
14 these homeless people, and train them and get them re-educated,
15 get them back out into the community and making money.

16 SENATOR PETRIS: That sounds great to me.

17 I've noticed in the last week alone two significant
18 moves in the direction of providing homes for the poor. One is
19 a private-public combination funded by -- I forget the name of
20 the institutions. I think World Savings is one. Sandler, Mr.
21 Sandler, who's the President, has committed an enormous amount
22 of money from his organization as a donation, and for other
23 kinds, too; a very low interest rate and so forth, along with
24 some kind of government program.

25 And then I noticed at the national level, an enormous
26 amount of money has just been committed for housing for the
27 whole country for the homeless.

28 I would hope that, even though I wouldn't expect your

1 Department to provide housing, that you could lend your support
2 and --

3 COL. VARGAS: Yes, sir, we can.

4 SENATOR PETRIS: -- and nudge the participants in
5 those programs to maybe carve out a certain portion of it for
6 veterans.

7 If the percentage is that high, we ought to be
8 committing a comparable amount of our resources to do what we
9 can to help there.

10 COL. VARGAS: I agree with you, sir.

11 And I have to compliment the people who are sitting
12 behind me, the State Commanders of the VFW, DAV, American
13 Legion, et cetera, and that's that they have been most helpful
14 in going out and touching these homeless people, and providing
15 them with clothes. And a lot of them have received jobs through
16 our veterans' organizations.

17 That's why I encourage, when I go around the state --
18 I've been to 44 cities, and I've spoken to 30,000 veterans and
19 other folks. And what I encourage those veterans that don't
20 belong to the American Legion, or the VFW, or DAV, to join,
21 because, as you know, sir, the strength of the various veterans'
22 organizations in the state is around 500,000. So, we have 3
23 million veterans in the State of California. That means there's
24 two point some million veterans out there that don't belong
25 veterans' organizations.

26 A lot of them, if they would just join, and even
27 visit some of the organizations that are established, the State
28 Commanders can help them get jobs. We have done that -- I

1 shouldn't say "we". The State Commanders have told me they have
2 provided jobs to a lot of our veterans that have come forward.

3 A lot of the veterans just don't come forward, and I
4 want to reach out and get them. I really do.

5 SENATOR PETRIS: Finally, on the Veterans Home, like
6 Yountville, how is the operation funded? Is that state General
7 Fund? You said you don't get any federal money.

8 COL. VARGAS: We do. It's 49 percent is General
9 Funding, and 51 percent is -- it's federal reimbursements
10 through the federal, and Medicare, and so forth.

11 SENATOR PETRIS: Individual benefits accruing to each
12 person.

13 COL. VARGAS: That's right.

14 SENATOR PETRIS: Thank you.

15 COL. VARGAS: Before I let you go, sir, I do want to
16 let you know that we have fully implemented Senate Bill 986, the
17 Petris bill, and begun holding appeals hearings under its new
18 guidelines.

19 You're right. When I walked into the job, one of my
20 first decisions on day three was to settle the Oakland fire
21 business. To me, that was putting veterans first, and to me,
22 that was making us whole again.

23 SENATOR PETRIS: Well, I appreciate that.

24 COL. VARGAS: Thank you, sir.

25 CHAIRMAN LOCKYER: Other questions? Senator Ayala.

26 SENATOR AYALA: First let me say, this is the first
27 time I would ever dare question a Colonel in the United States
28 Marine Corps.

[Laughter.]

CHAIRMAN LOCKYER: At least publicly.

SENATOR AYALA: Colonel Vargas, there is a move afoot to change the composition of the Veterans Advisory Council.

What is your position on that?

COL. VARGAS: I personally feel that the California Veterans Board should remain as the one and only Advisory Board to the legislation [sic] and the Governor.

And the reason that I say that is that over 80 percent of the veterans throughout the State of California are nonveterans -- excuse me, that don't belong to veterans' organizations.

I also believe that, or I know, the California Veterans Commanders Council does not represent all the major veterans' organizations. Many of the larger groups, such as the American Legion, DAV, Vietnam Veterans of America, are not represented in that particular bill, and that's AB 3113.

On a personal opinion, that's my job. I really believe that the veterans' organizations already have access to the legislation. They already have access to the Governor.

And bottom line, I truly believe that it's my job to advise the Governor and the legislation [sic], along with the State Commanders, on veterans' affairs. The Cal Vet Board is a proven vehicle, mechanism, that works very well for the legislation and the Governor and myself. They've given me some good advice. We have a tremendous relationship.

I'm concerned about certain -- this new advisory organization that they're trying to propose to pass, I'm against

1 it. I oppose it.

2 I already have worked with the veterans'
3 organizations, and they have come to me, the State Commanders,
4 and I in turn have gone to them, and we have a tremendous
5 relationship. And I just enjoy working with the State
6 Commanders, and I think that's the way to go.

7 Whenever they tell me to run across the street to see
8 any of the Senators, or any of the Assemblymen, I tell them I'm
9 available 24 hours, and I do it.

10 SENATOR AYALA: So you feel that the current system
11 is not broken and doesn't need fixing.

12 COL. VARGAS: It's not broken, sir. It's just that
13 somebody had to get in there and kick a little fanny and get it
14 going again.

15 SENATOR AYALA: You also heard that there is another
16 move to elevate your position from Director to Secretary, to
17 give it cabinet status.

18 Do you have any opinion on that?

19 COL. VARGAS: Can the Governor hear me on this one?

20 [Laughter.]

21 COL. VARGAS: Well, let me say that I'm well aware of
22 what took place at the national level, and there are some other
23 states that have done so.

24 First, let me assure everyone that I have a very good
25 relationship with the Agency Secretary Kozberg, and I had a
26 tremendous relationship with Secretary Smoley. And I have
27 almost an open door policy with the Governor, but I don't bother
28 and I don't abuse it. But if I really had to get in there, I

1 know darn well that he would let me in to chat things with him.

2 So, I have a good communications route with you all,
3 the Agency and the Governor.

4 I believe some of the veterans' organizations might
5 see this enactment as a major step by the Legislature and the
6 Governor toward giving veterans more status within the state
7 government.

8 Again, I kind of feel that's my job, to make sure
9 that we all understand the needs, the desires of the veterans
10 throughout the state.

11 But this measure, and that's AB 2597, I believe, by
12 Assemblyman Statham, I don't know. I don't think it would
13 improve the access of the Director to the Governor -- and here
14 I'm going to stick my neck out -- unless the Director was given
15 a cabinet status.

16 If Governor Pete Wilson came up to me and said, "Jay,
17 I'm thinking about making your position an independent position,
18 and I'm going to elevate it to cabinet level. Would you take
19 it?" You're damn right I would.

20 SENATOR AYALA: Currently you answer to the Director
21 of Consumer Affairs.

22 COL. VARGAS: Yes, sir.

23 SENATOR AYALA: And in a cabinet position, you would
24 deal directly with the Governor.

25 That wouldn't give the veterans a little more access
26 than the current --

27 COL. VARGAS: Again, I have a good relationship with
28 Agency. When it's an item that I have to get right into the

1 Governor's Office, or to your office, I always touch base with
2 Secretary Kozberg, and I do get in.

3 SENATOR AYALA: You have no problems with that.

4 COL. VARGAS: I don't.

5 But if you're asking me what would be my personal
6 opinion, I believe the cabinet status is something that has to
7 be looked at in the future, because we're dealing not with just
8 3 million veterans in the State of California. You multiply
9 that times two or maybe even three, and you're up around 8
10 million veterans that I'm responsible for. At least, I believe
11 I want to be responsible for.

12 SENATOR AYALA: I have two questions about the Napa
13 Veterans Home.

14 One is the fact that I've had some correspondence
15 from residents of the Home that feel they should have a single
16 residence instead of having to share their room with someone
17 else.

18 Is the Home at Barstow going to be considered to have
19 just one-room residence for the members?

20 COL. VARGAS: By law, in accordance with the Veterans
21 Department, we have to have two in a room, and it is by law.

22 I wish -- and I know that Captain Reber out at
23 Yountville wished that he could put one individual in a room.

24 If I had more money, we might be able to do that, but
25 I believe -- I can't find the answer as to why it's that way. I
26 have to go back to the buddy system; I really do. It's that you
27 have two individuals in a room, and they can care for each
28 other. And at the age of 65, 70, it doesn't hurt to have a

1 roommate.

2 I know I hated it when I was going to Arizona State
3 University. I had to have a roommate. I was hoping that he
4 would get married, or run away, or quit school.

5 But I wish we could, and I know that Captain Reber
6 wishes that we could. And I get letters, too, and I get phone
7 calls. But statute, law, that's what the anchor is.

8 SENATOR AYALA: The gentleman that wrote to me in a
9 letter yesterday, among other things, he said that his buddy
10 snores so loud, he can't sleep. So, he would like to have a
11 single room.

12 The other thing is, can you tell us about the golf
13 course at the Home? There's some controversy connected with
14 that. Can you tell us a little bit about that?

15 COL. VARGAS: Yes, sir. Before I leave here, I'm
16 going to give each one of the Senators a short point paper and a
17 long point paper on this issue, because I don't know where it
18 started, and it might be within the membership itself out there,
19 but there are some folks that are against this gold course.

20 The benefits to the state and to the members are
21 tremendous. And I'll start with the state. Between -- well,
22 let me start with the lease. The lease was signed 10 February
23 '94. The terms were for 30 years with three 10-year renewal
24 options. The bid went out to competitive bid with an award to
25 Mr. Inger in 1985, so this has been ongoing.

26 And during -- after Mr. Inger had won the initial
27 bid, the environmental study had to go forth, and then he passed
28 away. And then the issue just kind of -- just kind of dropped.

1 And then Mrs. Inger, through some consultants of
2 hers, approached us again that she would like to go ahead and
3 put the golf course in. The builder is called R.B. IMO,
4 Incorporation [sic]. A lot of people have been calling me, "My
5 gosh, is that a foreign investment corporation?" No, it's not.
6 It's Reynolds and Brown, a Concord, California development firm,
7 and the word IMO is, Imogene Inger is the name of the widow of
8 the original bidder, and the builder is going to be R.B. IMO
9 Incorporation.

10 And the rent, the minimum rent is \$25,000-80,000
11 revenue per year, estimated at likely to return of 68,000 the
12 first year, up to 140,000 at the fifth year and thereafter.

13 Is it legal? It is legal. It has been in accordance
14 with Sections 1023 Bravo of the Military and Veterans Code,
15 which authorizes this lease with the terms and conditions deemed
16 by the Director to be in the best interest of the Home.

17 The current use of the 60 acres of where this golf
18 course is going to go into is primarily just growing hay.
19 There's a farmer that plants it and cuts it each year.

20 The Home's driving range is nearby and employs four
21 members. There's also a short-term lease that we have with a
22 balloon association for landing rights, returns approximately
23 \$250 per month, but this is a lease that's month by month.

24 Now the benefits. For the state, the benefits are
25 68,000-140,000 revenue a year after it opens. All Home's water,
26 treated water, is disposed of. They will use this water to
27 water the golf course at no cost to the state. Traffic on the
28 Home property will be reduced.

1 And this provides also what I'm very proud of,
2 recreation for some of the taxpayers who live nearby who support
3 the Home to go out and hit the golf ball.

4 Now for the members, this is a tremendous asset for
5 the members. They get free golf three days a week between the
6 hours of 2:00-5:00. There's a free driving range that provides
7 more jobs for the members to work at the golf course. Right
8 now, there's four that are employed by Captain Reber that run
9 the driving range. Mrs. Inger will hire up to eight more, four
10 to eight members that will run the driving range.

11 The company, the construction company, is going to
12 relocate the garden that the members of the Home have at this
13 time. They're going to move it to a new site, till it,
14 fertilize it, even offer some plants to get it going again.
15 They're going to have a display room in the club house at the
16 golf course, and Mrs. Inger -- I should say R.B. IMO is going to
17 have an annual post fund charity golf tournament sponsored by
18 the owners, with charity auctions, and all proceeds will go to
19 the post fund.

20 And a new outdoors sports arena -- or, not arena, but
21 an area is being put together by the construction company that
22 will have bocci ball, picnic areas. It's all going to be
23 provided by the developer.

24 Have the members been communicated with? Yes, they
25 have. Since 1985, the administrator of Yountville has kept
26 these people informed all the way through, and as of October
27 through December -- I should say January of this year, they have
28 been kept informed. And I don't know what the heck -- who's --

1 maybe it's a nongolfer who got hit by a golf ball when he was a
2 ittle boy and he just hates golf courses, but what a tremendous
3 asset this is going to be for Yountville.

4 SENATOR AYALA: I think that was the main criticism,
5 that the project was approved, and the contract was signed, the
6 least, and then it was posted in the Home two weeks later.

7 You just got through telling us that the whole thing
8 surfaced in 1985.

9 COL. VARGAS: Yes, sir.

10 SENATOR AYALA: And ever since, you've been letting
11 the people know what's going on.

12 COL. VARGAS: Captain Reber has done a tremendous job
13 in keeping the President of the Council informed, the
14 memberships informed, and just before we signed off on the
15 contract, meetings were held by him with the whole membership.
16 It's a done deal, and it's going to go forward, and I wish I
17 could put a golf course around every home that we're going to
18 build in the future because it's a money maker.

19 The state, the monies will go into the General Fund.
20 The lease says that the Director will have a bid to approach
21 them to see if I can get some money out of that check every
22 month to throw into the post fund to benefit the post fund,
23 which I intend to do. And if I don't get that chance, I'm going
24 to raise a little hell about it.

25 That's all if have, sir.

26 SENATOR AYALA: Thank you, Colonel. I appreciate
27 your answers.

28 CHAIRMAN LOCKYER: Are there other questions from

1 Members?

2 I know there are a number of people here who are
3 supportive. Rather than to ask for testimony, because my guess
4 is that the Committee's ready to move along on this matter, if
5 that's acceptable to Members of the Committee, we'll just
6 acknowledge the many, many representatives who are present from
7 veterans' organizations and other places. We appreciate your
8 involvement, and we'll expect to hear from you if there are
9 problems, too.

10 May I just ask in conclusion, how are you trying to
11 improve matters for women veterans? What specific content does
12 that idea have?

13 COL. VARGAS: We have within the State of California
14 -- and at my first speaking engagement, I ran into a lady
15 veteran who has never come forth for her benefits ever. She was
16 misinformed. She said her husband never wanted her to -- for
17 her to admit that she had -- was a woman Marine. Why, I don't
18 know.

19 Two days later, we had her benefits. I had had my
20 service officers get hold of her, and she's receiving her
21 benefits today.

22 In the 44 cities that we have gone to, and my team
23 members that have gone throughout the state, we're finding more
24 and more lady veterans who have never applied for their
25 benefits. And we can't figure it out. So, we're going with
26 newspaper articles --

27 CHAIRMAN LOCKYER: Informational --

28 COL. VARGAS: -- information T.V. And by the way, on

1 our marketing program, I'm getting it both in English and
2 Spanish, and whatever other language people might want to hear,
3 but we're telling them about it.

4 And since -- over the past five months, I think we've
5 had 40; 40 lady veterans that have never come forward, and they
6 have since, and we're helping them now.

7 We're very proud of that, and there's more out there,
8 and I wish we could reach them all.

9 CHAIRMAN LOCKYER: Let me inquire. We know there are
10 plenty of supporters present. Our record shows no opposition
11 that's been sent in, but I should ask if there's anyone of that
12 sort who'd wish to comment?

13 What's the pleasure of the Committee?

14 SENATOR CRAVEN: Mr. Chairman, I'd like to move the
15 nomination of Colonel Vargas.

16 CHAIRMAN LOCKYER: Call the roll, please.

17 SECRETARY WEBB: Senator Ayala.

18 SENATOR AYALA: Aye.

19 SECRETARY WEBB: Ayala Aye. Senator Beverly.

20 SENATOR BEVERLY: Aye.

21 SECRETARY WEBB: Beverly Aye. Senator Petris.

22 SENATOR PETRIS: Aye.

23 SECRETARY WEBB: Petris Aye. Senator Craven.

24 SENATOR CRAVEN: Aye.

25 SECRETARY WEBB: Craven Aye. Senator Lockyer.

26 CHAIRMAN LOCKYER: Aye.

27 SECRETARY WEBB: Five to zero.

28 CHAIRMAN LOCKYER: Keep up your fine work.

1 COL. VARGAS: Thank you, sir. I'm honored.

2 [Thereupon this portion of the
3 Senate Rules Committee hearing
4 was terminated at approximately
5 4:15 P.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of March, 1994.


EVELYN J. MIZAK
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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

CURTIS L. AUGUSTINE, Chief
Bureau of Electronic and Appliance Repair
Department of Consumer Affairs

GEORGE MEESE, Member
Unemployment Insurance Appeals Board

JESSIE J. KNIGHT, JR., Member
Public Utilities Commission

SENATOR QUENTIN KOPP

SENATOR HERSCHEL ROSENTHAL

DONALD D. DOYLE, President
Junior Achievement of the Bay Area

PERRY O. JOHNSON, Member
Workers' Compensation Appeals Board

WILLIE WASHINGTON
California Manufacturers Association

MELISSA R. BROWN
California Applicants' Attorneys Association

APPEARANCES (Continued)

BARRY WILLIAMS
California Applicants' Attorneys Association

JACK HENNING
California Labor Federation

CHARLES J. REITER, Legislative Director
State Building and Construction Trades Council
of California

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: I guess we're to the business of reviewing the Governor's appointees. The first is Curtis Augustine.

Why don't you tell us about yourself and why you'd like to continue doing this job you've been doing?

MR. AUGUSTINE: Mr. Chair and Members, thank you for this opportunity to appear before you today as the nominee for the Chief of the Bureau of Electronic and Appliance Repair.

At the beginning of his administration, Governor Wilson asked that we put the word "consumer" back into Consumer Affairs. We at the Department of Consumer Affairs are committed to stronger enforcement, better licensing, and a more efficient way of doing business.

At this time, I would like to discuss the experience I bring to this position. Prior to my appointment in October, I was the Bureau's Deputy Chief since May of '1991. During the past three years, we have made significant improvements in our consumer protection efforts. For example, our efforts have resulted in a 77 percent increase in overall enforcement actions, a 700 percent increase in citation and fines written, creation of criminal infractions for unregistered dealers, initiation of legislation to disconnect telephones for illegal activities, and the initiation of legislation to regulate service contracts.

I am grateful to have been part of the Consumer Affairs success the past three years. Under my direction, the

1 Bureau will continue to play a major role in protecting the
2 consumers of California with our ongoing emphasis on
3 enforcement, and the education of consumers and the industry.

4 Thank you for your consideration, and I'll be happy
5 to answer any of your questions.

6 CHAIRMAN LOCKYER: When you talked about the
7 percentage increase in enforcement, I guess I have some data
8 here, were these sort of administrative disciplinary actions?

9 MR. AUGUSTINE: Yes, they would be both
10 administratively as well as criminally. We've had an increase
11 in all our enforcement actions.

12 CHAIRMAN LOCKYER: And those you refer out to
13 district attorneys?

14 MR. AUGUSTINE: Yes, the criminals, yes, sir.

15 CHAIRMAN LOCKYER: So, it went from a total of 37 to
16 a total of 60 in two years.

17 MR. AUGUSTINE: Yes.

18 CHAIRMAN LOCKYER: What did those 60 people do? How
19 did you find out that there was a problem, and what did you do
20 about it?

21 MR. AUGUSTINE: Through most of our actions, they
22 either generate through consumer complaints or our own
23 investigators are going out and doing spot inspections and
24 generating these leads on their own. But the vast majority are
25 found through consumer complaints.

26 We then work those consumer complaints, and finding
27 that there's two major areas that we would take any action
28 against would be fraud and incompetence and negligence.

1 CHAIRMAN LOCKYER: Can you break that down into which
2 you think is fraudulent and which negligent?

3 MR. AUGUSTINE: Right. I would say about 55 percent
4 would be the incompetence/negligence, and 45 percent would be
5 fraud.

6 CHAIRMAN LOCKYER: What's the penalty when there's
7 some administrative discipline?

8 MR. AUGUSTINE: Yes, when we develop a case that we
9 present to the Attorney General to be taken administratively,
10 usually the merits of the case are such that we ask for a
11 revocation of the license.

12 CHAIRMAN LOCKYER: Would you look at some pattern of
13 activity? Let's say you get a complaint from a consumer about a
14 business. Do you then look through the files for similar repair
15 jobs and contact people, or how does this work?

16 MR. AUGUSTINE: Yes, the field investigator handles a
17 particular territory, and he's quite familiar with all the
18 service dealers in his area. When we receive a complaint, the
19 first thing we do is enter it in and check to see if there are
20 any other complaints against this particular business.

21 If there are, the investigator then looks to see if
22 there's a pattern, and it becomes apparent that some action is
23 going to be required if he has demonstrated that pattern.

24 CHAIRMAN LOCKYER: There are a lot of these people in
25 the state; right?

26 MR. AUGUSTINE: Unfortunately, there are more than
27 there should be, sir.

28 CHAIRMAN LOCKYER: Close to 20,000 licensees, when

1 you count the expansion of service contracts.

2 MR. AUGUSTINE: Yes. There is -- that would be the
3 actual licenses issued. Some of the businesses would actually
4 have both sets of licensure. They would sell service contracts
5 as well as repair.

6 CHAIRMAN LOCKYER: It might be one license, but a
7 whole bunch of people that work there doing equipment repair.

8 MR. AUGUSTINE: Oh, yes. We just register the
9 business, so there could be a number of services under that.

10 CHAIRMAN LOCKYER: Do a lot of other states not
11 bother to do this?

12 MR. AUGUSTINE: Most states do not; however, the
13 State of Michigan and the State of Arizona are presently looking
14 into that, and they've asked me for all the information we have,
15 and copies of our legislation. They feel that they're going to
16 proceed with that in their states.

17 CHAIRMAN LOCKYER: Do we have any way of knowing
18 that, if you look in what seem to be a majority of the states
19 where they don't do this, are consumers better off here than
20 they are there?

21 MR. AUGUSTINE: No. I think that my contact with
22 other consumer leaders in other states feel that there is a need
23 there.

24 In fact, a registered dealer that we revoked recently
25 picked up shop and went to Arizona because he knew he could get
26 away with it there and not here.

27 CHAIRMAN LOCKYER: So, you wouldn't recommend
28 deregulation of this?

1 MR. AUGUSTINE: No, unfortunately, I wouldn't, sir.
2 I'm afraid that there is enough consumer fraud going on out
3 there that, without our watchdog efforts, that consumers would
4 be prey to additional fraud.

5 CHAIRMAN LOCKYER: Is there any method of following
6 up? Once you discipline someone, does the field personnel check
7 periodically to see what they're doing?

8 MR. AUGUSTINE: Yes, we do. We follow up on that, as
9 well as we have an unregistered activity unit that searches for
10 anyone, so if they had had their license revoked and they're
11 advertising, we've obviously not given them their license back,
12 and we would pursue them that way.

13 CHAIRMAN LOCKYER: Are there other questions?
14 Senator Ayala.

15 SENATOR AYALA: What percentage of your staff is
16 actually observing, investigating in the field?

17 MR. AUGUSTINE: Of our staff, we have ten people
18 whose efforts are devoted to nothing but enforcement, and 70
19 percent of our budget is spent on enforcement operations.

20 SENATOR AYALA: What discipline actions does the
21 Bureau take in terms of violations or abuses of repairs?

22 MR. AUGUSTINE: When we prepare a case, without
23 nearly any exceptions, we are asking for a revocation of the
24 license. And if we are going after criminal action, we will
25 file under the appropriate misdemeanor codes.

26 SENATOR AYALA: You can take away their license to
27 operate?

28 MR. AUGUSTINE: Yes, we can; yes, we do.

1 SENATOR AYALA: Thank you.

2 CHAIRMAN LOCKYER: Is there anyone present who would
3 wish to comment, either for or oppose?

4 What's the pleasure of the Committee? Senator
5 Craven.

6 SENATOR CRAVEN: Move.

7 CHAIRMAN LOCKYER: Move we recommend confirmation.

8 Did you want to add anything?

9 MR. AUGUSTINE: No, thank you, sir.

10 CHAIRMAN LOCKYER: Let's call the roll.

11 SECRETARY WEBB: Senator Ayala.

12 SENATOR AYALA: Aye.

13 SECRETARY WEBB: Ayala Aye. Senator Beverly.

14 SENATOR BEVERLY: Aye.

15 SECRETARY WEBB: Beverly Aye. Senator Petris.
16 Senator Craven.

17 SENATOR CRAVEN: Aye.

18 SECRETARY WEBB: Craven Aye. Senator Lockyer.

19 CHAIRMAN LOCKYER: Aye.

20 SECRETARY WEBB: Four to zero.

21 CHAIRMAN LOCKYER: Thank you.

22 MR. AUGUSTINE: Thank you.

23 CHAIRMAN LOCKYER: Mr. Jessie Knight is the next one.

24 SENATOR KOPP: I had advised him it would be 3:00
25 o'clock. He will be here momentarily.

26 CHAIRMAN LOCKYER: We'll have you stand down and wait
27 a minute.

28 George Meese.

1 MR. MEESE: Good afternoon, sir.

2 CHAIRMAN LOCKYER: Good afternoon.

3 Do you want to tell us about this job, why you like
4 it, and should you be appointed?

5 MR. MEESE: Well, I've been here about eight years
6 now, Mr. Chairman, and I've appeared before the Rules Committee
7 before, as you know, and I appreciate your support.

8 For this particular hearing, I'm very thankful to
9 have the support of the Association of California State
10 Attorneys. I trust they have perceived me to be reasonable,
11 fair, and impartial in the performance of my duties on the
12 Board. I trust that I have been, and that's what I've tried to
13 do.

14 So, I'm here again and very much appreciative of your
15 -- would very much appreciate your support one more time. I'd
16 be happy to answer any questions you might have.

17 CHAIRMAN LOCKYER: Are there questions from Members?

18 While they review the materials, Mr. Meese, maybe you
19 could comment on the problem of the backlog of cases before the
20 Board, and what seems to be happening to address that?

21 MR. MEESE: The backlog is -- I don't believe we have
22 a backlog now. We are meeting the timelines required by the
23 federal government.

24 Sometime ago we did, approximately two years ago.
25 With massive hiring of attorneys and clerical staff, we have met
26 that challenge now, and as I say, we have met timelines. We've
27 just about doubled our attorney staff and doubled our clerical
28 staff.

1 CHAIRMAN LOCKYER: So you staffed up?

2 MR. MEESE: Yes.

3 CHAIRMAN LOCKYER: Is it satisfactory now?

4 MR. MEESE: Yes, and I believe very shortly we'll be
5 going on the down side now. We hired temporary people in great
6 number, and it looks like very shortly we will be able to go in
7 the opposite direction.

8 CHAIRMAN LOCKYER: Maybe you could just, while we
9 have you, reflect for a moment. You've now seen a lot of cases.

10 MR. MEESE: Yes.

11 CHAIRMAN LOCKYER: I guess thousands of them, in
12 effect, over the years that have come by.

13 Do you have any observations to make with respect to
14 the policy, not so much the administrative functions, but does
15 the law seem fair to you? Are there troubling cases that you
16 wish you could provide a benefit, but you can't, or vice-versa,
17 where you don't think a benefit should be conferred, but the law
18 seems to necessitate that decision on your part? Anything that
19 comes to mind that would be constructive for us in reviewing the
20 law from time to time?

21 MR. MEESE: We do have some leeway, I think, in most
22 of the cases where -- I think of the case where a person has
23 been promised a job someplace, and so he gives his resignation,
24 and all of a sudden, the new employer tells him that he really
25 doesn't have a job. So technically, he did not really have that
26 job, but generally we do pay benefits because he was unemployed
27 through no fault of his own.

28 Probably, if I had 15 minutes or a half hour away

1 from this particular area, I could think of many more.

2 CHAIRMAN LOCKYER: None that just seem to offend --

3 MR. MEESE: No.

4 CHAIRMAN LOCKYER: -- or the law isn't right, in your
5 view, that you see come by?

6 MR. MEESE: I can't think of anything right now, I'm
7 sorry. There probably are some.

8 CHAIRMAN LOCKYER: That's a good answer.

9 If you ever notice that in the course of your duties,
10 that you think the law perhaps should be reviewed, I hope you'll
11 let us know.

12 Are there questions at all? Senator Ayala.

13 SENATOR AYALA: Given the current backlog, how long
14 should a person expect to wait before their case comes before
15 your Board?

16 MR. MEESE: The law requires now that we have 80
17 percent of our cases out within 75 days, and we're meeting that.

18 SENATOR AYALA: What percentage, 75?

19 MR. MEESE: It's 80 percent in 75 days, and we're
20 making great headway in getting 40 percent in within 45 days.

21 SENATOR AYALA: Is that about average, normal, high?
22 What is the backlog?

23 MR. MEESE: Actually, we don't have a backlog as such
24 right now. because of the increase of staffing, we're meeting
25 what we had met prior to the large increase in the unemployment.

26 At one time we were -- there was a great delay in
27 people getting hearings, but that's no longer the case, that
28 people have to wait a long, great deal of time for their

1 hearing.

2 SENATOR AYALA: But the average time an applicant has
3 to wait today is about 75 days after they terminate their job?

4 MR. MEESE: If they are turned down for benefits and
5 appeal that, then many of them are heard within 45 days, and
6 some take as long as 75 days.

7 SENATOR AYALA: That's two months, at least two
8 months, or thereabouts.

9 MR. MEESE: That's correct.

10 SENATOR AYALA: Doesn't that have a tendency to have
11 people go and seek welfare instead while they're waiting for
12 their case to be heard?

13 MR. MEESE: I guess they have to do something. Of
14 course, they do get the money later on if they were found to be
15 entitled.

16 Most of the people who are denied benefits are denied
17 benefits [sic] and they don't get them later on, probably around
18 ten percent.

19 SENATOR AYALA: You're saying you're short of
20 manpower, that's why the delay is so great? You don't think
21 it's a long time?

22 MR. MEESE: It is a long time. Any amount of time
23 would be a long time.

24 SENATOR AYALA: Due to the fact that you don't have
25 the people to work with?

26 MR. MEESE: I guess it probably would be impractical
27 to hire more people to get that down, but it would benefit so
28 very few as far as overturning the decision of the Department.

1 SENATOR AYALA: Thank you.

2 CHAIRMAN LOCKYER: Is there anyone present who would
3 wish to comment with respect to this confirmation?

4 What's the pleasure of the Committee?

5 SENATOR CRAVEN: Move.

6 CHAIRMAN LOCKYER: Senator Craven moves positive
7 recommendation.

8 Call the roll.

9 SECRETARY WEBB: Senator Ayala.

10 SENATOR AYALA: Aye.

11 SECRETARY WEBB: Ayala Aye. Senator Beverly.

12 SENATOR BEVERLY: Aye.

13 SECRETARY WEBB: Beverly Aye. Senator Petris.
14 Senator Craven.

15 SENATOR CRAVEN: Aye.

16 SECRETARY WEBB: Craven Aye. Senator Lockyer.

17 CHAIRMAN LOCKYER: Aye.

18 SECRETARY WEBB: Four to zero.

19 CHAIRMAN LOCKYER: Thanks, George.

20 MR. MEESE: Thank you very much.

21 CHAIRMAN LOCKYER: Senator Kopp and Mr. Knight.

22 SENATOR KOPP: Thank you, Mr. Chairman.

23 Mr. Chairman, Members of the Committee, it is a
24 personal privilege to present to you for a recommendation for
25 confirmation in the highest traditions of advising and
26 consenting to a gubernatorial appointment, this to the Public
27 Utilities Commission, Jessie J. Knight, Jr., whom I've known
28 since 1985.

1 He's compiled a series of credentials in private
2 business and the business sector which include some --

3 CHAIRMAN LOCKYER: Pineapples.

4 SENATOR KOPP: Pineapples, Castle and Cooke, and
5 Dole.

6 I met Mr. Knight in 1985 when he came to San
7 Francisco with the San Francisco Newspaper Publishing Company,
8 and he is solid. And then he became associated with the Greater
9 San Francisco Chamber of Commerce. Mr. Don Doyle, former Member
10 of the California Assembly, and former Executive Director of the
11 Chamber of Commerce, is present, Mr. Chairman, also a dear
12 former colleague of at least some of the Members of this
13 Committee. And he worked as Vice President under Mr. Doyle's
14 aegis, and as indicated, he was appointed to the PUC about seven
15 months ago.

16 As you know, Mr. Chairman, I have a bill pending in
17 the Senate Judiciary Committee, which you're a co-author of,
18 Senator Rosenthal, and that would allow the Court of Appeal to
19 accept Petitions for Review. It's noteworthy to me that the PUC
20 has taken no position of opposition to that salutary measure.

21 Mr. Knight's activities in the community are
22 different. They are broad-sweeping. You will note, Mr.
23 Chairman and Members, that in 1991, for example, he was the
24 Grand Marshal of the Chinese New Year Parade in San Francisco.
25 I don't want to hear any titters from this audience, because
26 that's a solemn event, attended by about 400,000 people.

27 For Senator Craven's benefit, if no one else's, he's
28 a Dominican, graduate of St. Louis University. No, he didn't

1 play for Ed Hecky, but in any event, he probably could have.

2 SENATOR CRAVEN: Tell me why he started his schooling
3 in Madrid, according to what I'm looking at, which is kind of
4 the home field for Augustinians, not Jesuits who educated him
5 when he got to St. Louis?

6 [Laughter.]

7 SENATOR KOPP: He'll respond to that question,
8 Senator Craven.

9 But in sum, I'm here because I believe very strongly
10 in Mr. Knight's qualifications. I hope to be able to vote for
11 his confirmation on the Senate Floor, and I commend him to you
12 in all earnestness and with genuineness.

13 Of course, he is here to present his own credentials
14 in his own way, and to answer the questions, and there are other
15 witnesses who are here in support of his confirmation as well.

16 CHAIRMAN LOCKYER: Thank you very much, Senator Kopp.
17 We appreciate your recommendation.

18 We finished, I guess, the Talmudic phase. We're
19 going to shift to the Jesuitical phase with Senator Craven's
20 inquiry.

21 Senator, I know you have a bill in Judiciary, and
22 we'll excuse you to attend to that.

23 SENATOR KOPP: Thank you.

24 CHAIRMAN LOCKYER: Mr. Knight, do you want to kind of
25 give us any general statement to start us?

26 MR. KNIGHT: Yes, thank you very much.

27 First of all, the Jesuits ran Spain for centuries.
28 They still have a very strong mark in Spain, I might add.

1 Chairman Lockyer and distinguished Members of the
2 Senate Rules Committee, it is indeed a great honor to appear
3 before this august body to seek confirmation for the position of
4 Commissioner of the Public Utilities Commission.

5 First let me say that the most important
6 qualification that I bring to the Commission is a strong
7 commitment and dedication to make a significant contribution to
8 helping you, your colleagues, and the hundreds of other
9 dedicated public servants, to allow California the opportunities
10 to recapture economic leadership.

11 Not only was it an honor to be called to serve by
12 Governor Wilson, it has also been inspiring to receive a
13 ground swell of diverse support as I embark upon this tough
14 journey. From all over California, people in business, big and
15 small, nonprofit organizations, educators, and just plain, old,
16 everyday good citizens have taken the time to write letters of
17 support in my behalf. I must always keep in mind that it is
18 these individuals and the great people of California for whom I
19 serve.

20 California has been good to me since I came out here
21 as a wide-eyed young man out of the University of Wisconsin with
22 an MBA in my hands. I came here in search of carving out a
23 successful life in the state that held all my lofty dreams.

24 I'm proud to claim that I am the son of wise and
25 devoted parents who struggled in poverty together. My father,
26 who could not make it here on such short notice, is a retired
27 railroad laborer who cannot read or write, but is a brilliant
28 man who struggled to educate his six children and put fire in

1 their hearts to value education, work hard, shoot for the moon,
2 and never forget to be willing to help others.

3 To some, when I talk like this it may sound a little
4 corny or folksy, but it is a Midwestern ethic that I brought
5 with me to California in 1975, and it's an ethic that I will
6 follow until my dying day.

7 Now, I have chosen to totally immerse myself in doing
8 the work of the people by becoming a full-time public servant.
9 And I believe I have much to give to California, and because of
10 my successes and my heritage, I have much to give back.

11 When I was approached to accept this challenge six
12 short months ago, I recognized the influence my position would
13 have on California's economic future. The six months I have
14 served on the Public Utilities Commission has presented me with
15 economic, financial, and social issues, the resolution of which
16 will affect the very character of this state.

17 After six months of actual experience, I am
18 profoundly reminded each and every day of the crucial role and
19 burdens borne by a CPUC Commissioner. It is not a
20 responsibility to be taken lightly, and one that is not for the
21 faint of heart.

22 From the moment I arrived, I've been challenged with
23 problems and opportunities that few people have the chance to
24 experience over the course of their career. I have found that
25 it is a position that requires balance, objectivity,
26 intellectual curiosity, and decisiveness.

27 I believe my background has prepared me well to
28 perform the duties of the office and to faithfully represent the

1 best interests of the people of California. I have had 20 years
2 of significant managerial experience and accomplishment in the
3 private sector. After business school, I worked for 10 years
4 for the San Francisco-based Dole Foods Company under the
5 multi-billion dollar umbrella of Castle and Cooke, Incorporated.

6 The experience afforded me the opportunities to work
7 in a wide variety of responsible positions in domestic and
8 international business units in finance, operations, marketing,
9 business development, and strategic planning. My last job there
10 was a three-year stint as Director of Marketing for the U.S. and
11 Canadian retail grocery products for all Dole canned pineapple
12 and Dole juices.

13 After Dole, I spent seven years in the publishing
14 business as Vice President of Marketing for the San Francisco
15 Chronicle and the San Francisco Examiner newspapers. My
16 responsibilities not only involved marketing, but included
17 research and development, strategic planning, and public
18 affairs. During those years, I greatly increased my outside
19 community service activities.

20 Two and a half years ago, I left publishing to take a
21 position as Executive Vice President for the San Francisco
22 Chamber of Commerce. As Executive Vice President of the San
23 Francisco Chamber of Commerce, I had the responsibility for
24 promoting the City of San Francisco and overseeing the
25 organization's international operations, economic development
26 activities, business development for small business, and
27 handling communications for the 2,100 businesses represented by
28 the organization and its 7500 members.

1 At the Chamber, my job was extremely challenging.
2 The Chamber had embraced a new mission: to attract, develop and
3 retain business in San Francisco. I was charged to lead the
4 economic vitality team, as we called it, to drive economic and
5 business development in San Francisco.

6 My volunteer team and I, partnered with other
7 business organizations, worked with labor, helped the Board of
8 Supervisors fashion pro-business legislation to create and
9 attract jobs, educated people to have an international
10 perspective, to broaden economic opportunities, and work with
11 minority business organizations and neighborhood groups. We
12 attracted and retained over 4,000 new jobs in the city, an
13 unparalleled success for the entire community.

14 I am proud of the members of the San Francisco
15 Chamber of Commerce, and proud of my two-year stint there. One
16 reason for the success was that we reached out to all segments
17 of the city's community and shared our vision on how business
18 development would contribute to the overall quality of life.
19 This emphasis on common interest required open channels of
20 communication.

21 As the primary facilitator of this effort, I believe
22 there are many lessons to be transferred to the CPUC, and I
23 pledge my commitment to this strategy over the next few years.

24 Last November, the San Francisco Urban Planning
25 Association, SPUR as it is known, San Francisco's leading
26 economic development policy think-tank, awarded me its highest
27 award, called the Silver SPUR Award, for my contributions
28 towards enhancing the city's economic vitality. It is an award

1 that I will cherish all of my life, but deserves to be shared
2 with many like-minded citizens who worked closely with me to
3 achieve quantifiable results in a city which uninformed critics
4 labeled as incapable of solving serious problems.

5 It is the Chamber model I use as a mental benchmark
6 when I face certain issues at the Commission that impact the
7 overall economy of California.

8 The Chamber experience also highlights what I think
9 is the most important facet of my background, and that is a
10 life-long commitment to public service that has been
11 inextricably linked to my professional background since 1975.
12 I presently serve on the boards of a number of nonprofit
13 organizations that are dedicated to education, international
14 understanding, and helping those in need. I serve on the
15 Investment Review Committee of the San Francisco Foundation, the
16 Boards of Directors of the San Francisco Committee on Foreign
17 Relations, Golden Gate University, the International Visitors
18 Center, and the World Affairs Council of Northern California,
19 where I am Vice Chairman of the Board.

20 I also serve on the Advisory Boards of: Project Open
21 Hand, an organization that helps those with AIDS; the Sierra
22 Club; the Asia Foundation; and the San Francisco Main Library.

23 By drawing upon my community experience to be
24 sensitive to the needs of the people; my marketing experience to
25 focus on customer needs, and my economic development experience
26 to strive for innovation, to create new business opportunities
27 and jobs, affords me an unique perspective to approach the
28 duties of a Commissioner. My experience gives me the

1 opportunity to help my fellow Commissioners usher the agency
2 into an era that emphasizes cooperation, consensus and coalition
3 building to resolve issues, and to focus on opening up lines of
4 communications for all stakeholders.

5 The dissemination of technology capital has created
6 the potential for competitive markets in some utility
7 industries. Where that potential is frustrated, we must
8 determine if it is because market imperfections exist that
9 prevent competition from emerging, or is it our own regulatory
10 reactions that impede the development of competition.

11 Where markets are not competitive, the Commission
12 must exercise our authority vigorously to protect Californians
13 from the abuse of market power.

14 Even where competition exists, it is more and more
15 important for the Commission to manage and monitor multiple
16 providers of utility service so that safety and consumer
17 protection issues are addressed. Also, we must be vigilant in
18 our ability to safeguard a regulatory environment that allows
19 new providers and incumbent utilities to compete fairly.
20 However, these trying issues will place a greater emphasis on
21 the Commission's priorities and allocation of resources.

22 In the most tranquil of times, the learning curve for
23 a new PUC Commissioner is a daunting one. It is a herculean job
24 with enormous pressures. One must have the intellectual and
25 physical constitution to deal with a mountainous caseload which
26 is intertwined with complex issues around the industries we
27 regulate. Now, new issues are thrown on the plate for us to
28 effectively sort out, such as the inevitable restructuring of

1 the agency itself, and our ever-present budgetary and resource
2 constraints.

3 Like my predecessors, I stand ready to accept the
4 task before me should you see fit to entrust the responsibility
5 to me.

6 I thank you, and I'll take whatever questions you may
7 have.

8 CHAIRMAN LOCKYER: Senator Ayala.

9 SENATOR AYALA: Mr. Knight, how do you reach a
10 balance between the obligations you have to the consumer and to
11 the company, the California company, that you're obligated to
12 regulate? How do you come to that balance?

13 MR. KNIGHT: First of all, I think, again, being a
14 person not certainly from the utility industry, and one that has
15 not been involved in governmental affairs, one of the things
16 that I have -- I think that we need to keep in mind as
17 Commissioners -- and I think a lot of times, sometimes, the
18 press forgets this, and sometimes I think people on the outside
19 looking at the organization forget -- that the role of a
20 Commissioner is to keep that balance. And many, many times we
21 are seen as the judge between parties most often.

22 The primary responsibility is for us to protect
23 consumer interests. And I think, with my past background,
24 particularly having been in the food business, I have always
25 been a consumerist in the sense that marketing needs really
26 dictate what one should be about when dealing with the
27 marketplace.

28 And I think I have a balanced, objective point of

1 view in terms of what those responsibilities are from my
2 background.

3 SENATOR AYALA: You spent quite sometime with the
4 Chamber of Commerce, which is business-oriented, as well it
5 should be.

6 How about the other, the consumer end of it? How
7 much time do you have devoted to that sector?

8 MR. KNIGHT: Well, part of the problem the Chamber
9 had for a number of years was that it had always been seen as
10 the voice of downtown business. And one of the changes that
11 took place in the Chamber's mission was for us to recognize that
12 that circle, for the Chamber to be successful, that that circle
13 had to enlarge, and it had to be far more inclusive.

14 San Francisco, as many people know, has been touted
15 as a very difficult place to launch any pro-business activities.
16 But one of the things that I think we found successfully was
17 that by keeping communications open with other organizations and
18 neighborhood groups, those who have either a smaller interest in
19 some of the more immediate initiatives of the Chamber, but
20 keeping a perspective that quality of life is equal to economic
21 vitality, that real simple formula in the course of our everyday
22 dealings, we were able to expand participation of people who
23 were forgotten and, in many ways, the consumers of what Chamber
24 activities were all about.

25 SENATOR AYALA: Thank you.

26 CHAIRMAN LOCKYER: Senator Rosenthal, I know as Chair
27 of the appropriate committee, you're interested in this. Do you
28 have some questions?

1 SENATOR ROSENTHAL: Good afternoon.

2 As Chair of the Energy and Public Utilities
3 Committee, I've had a long-standing interest in seeing that the
4 PUC maintains a fair process and allows public access to the
5 decision making process.

6 These concerns were heightened last year when the
7 Commission allowed utility executives to secretly meet with the
8 decision makers and to edit a major telephone rate decision
9 which would have greatly benefitted the utilities. The
10 Commission voted to accept this tainted decision, even though
11 some Commissioners told my committee they had not even seen the
12 disputed evidence.

13 Now, this scandal brought great embarrassment to the
14 Commission. It's still working to re-establish its integrity.
15 Fortunately for you, you did not participate in that proceeding.

16 However, I'd like to ask you a few questions on your
17 views about that PUC process which may now be under
18 consideration by the Legislature, because as a result of that
19 happening, a number of bills have been introduced in the
20 Legislature trying to deal with some of those particular issues.
21 In this area I have three questions.

22 What's your opinion about a lower court judicial
23 review of PUC decisions?

24 MR. KNIGHT: Well, let me first back up to the first
25 part of your commentary.

26 You're right, I was not there then, but I still bear,
27 I think, the responsibility, as do my other Commissioners, in
28 trying to improve the situation such that things like that don't

1 happen again.

2 First of all, I think it's important to point out
3 that the public has been caught up, I think, overwhelmingly so,
4 on what happened there. And even if that unfortunate situation
5 hadn't taken place, I think the PUC still would have been under
6 tremendous pressures to review its internal processes, because I
7 think what is at stake here, and the problem that we have to
8 correct, is that the anachronistic approach to regulating
9 utilities is rapidly changing. And the process has to be
10 changed in that we can come into, I think, a modern world as the
11 rules are starting to change.

12 For the most part, the process, the way we take
13 information for an individual case, needs to be reviewed. We
14 are actively pursuing that and looking at what changes can take
15 place.

16 For the most part, I think we do have a handle on it.
17 It's unfortunate that this legislation has been promulgated,
18 because I think it's unfortunately trying to cure a part of the
19 problem, and I think it goes much deeper than that. And the
20 Commissioners are trying to get ahold of this by reviewing the
21 entire process, not just concentrating on trying to correct what
22 happened in one individual case.

23 I will do my part to try to contribute to that, so
24 that we manage the process much better than we have in the past.

25 The issue of judicial review, I am concerned about
26 it. I can understand what the pressure is as building for us to
27 do that, but at the same time, we have to be very vigilant that
28 we aren't going to extend the process so that we have further

1 regulatory delay in coming to decisions. That's a danger, that
2 whatever legislation is fashioned to try to deal with this
3 issue, that I hope the authors do keep in mind that we need to
4 make our organization far more efficient and not put on added
5 layers of review when they're unnecessary.

6 SENATOR ROSENTHAL: The second is your thinking about
7 ex parte contacts.

8 A couple of years ago, there was legislation to deal
9 with ex parte, and the Commission informed us that they didn't
10 need any legislation; they could take care of it in-house, but
11 it didn't work. Now the legislation is again introduced to do
12 something about ex parte.

13 Comment?

14 MR. KNIGHT: Well, when I first got to the
15 Commission, not being a lawyer, I didn't know anything about
16 what this ex parte stuff was all about, and in dealing with my
17 colleagues, was educated on what the rules and regulations were
18 of the Commission in dealing with them.

19 At the beginning, I was certainly of the belief that
20 I should be able to talk to anyone at any point in time. But
21 over the last few months, I think I have become far more
22 educated in terms of what should make the Commission operate far
23 more efficiently and fairly.

24 When I first got there, I instituted a policy that
25 was new, whereby -- not that I ruled out single ex parte
26 contacts, but I tried to manage the process by saying: whenever
27 there was a case to come forward, that I would only meet with
28 parties on both sides of an issue. And I initially did it as a

1 time management vehicle, because rather than running from one
2 individual ex parte contact to another, I thought it was far
3 more efficient for the decision making process for all to come
4 together to a tightened agenda, and for each party to be able to
5 present their side to an argument.

6 It aided me in terms of being able to hone down to
7 the key issues, and at the same time, I think it efficiently
8 used the time of the parties in order to get their point of view
9 across.

10 I still think that that model works quite handsomely.
11 Again, the risk of putting the -- making a
12 legislative mandate, I again only caution that by tying the
13 Commissioners' hands to only do things one certain way, I think
14 could have a downside in terms of the process.

15 I have instituted a quiet time, as we get closer to
16 Commission meetings, in that I do not take ex parte contacts, or
17 ask parties not to try to set up meetings with my office unless
18 there's something of an extraordinary nature that would
19 materially affect the case.

20 So all in all, I think management of the ex parte
21 process is important. I'm not sure that we need to put iron
22 clad rules on that process, though.

23 SENATOR ROSENTHAL: I'm not opposed, nor is anyone
24 opposed, to conversations that individuals may or may not have.
25 It just seems to me that at some point, there ought to be a cut
26 off of some kind before a final decision is made so that
27 everybody knows the rules of the game.

28 In Washington, for example, before the commission

1 there that deals with similar kinds of things, there are
2 conversations that take place, but then they're noticed so that
3 the opposition at least is aware of the subject matter that's
4 being discussed by the others.

5 So, I'm not sure what direction the Legislature's
6 going to take, but it appears to me, at least, that there ought
7 to be some cut off before a decision is made.

8 MR. KNIGHT: Well, again, for myself, I have asked
9 parties that I'd like five working days prior to a meeting for
10 quiet time for me for the cases that I'm involved with.

11 But I think one of the things that ought to be
12 pointed out that would help this problem, the more that
13 Commissioners are involved with a case up front, and more
14 communications there is with a Commissioner, with the ALJ, I
15 think the less the pressure is to do things off center from
16 where an ALJ may be going on a particular case.

17 So again, it comes back to communication again. And
18 I just hope that whatever legislation does come out, that it is
19 thought through, that Commissioners' hands are not tied
20 unnecessarily.

21 SENATOR ROSENTHAL: Finally, on this particular area,
22 I was concerned about the final decision that the Commissioners
23 made. You're responsible for making that decision, and I don't
24 have a problem with that.

25 The problem I have is that there's an ALJ who takes
26 testimony on a particular subject matter. You can accept or not
27 accept that decision and make your own, as far as I'm concerned.
28 However, if you decide to make an alternative decision, not

1 based upon the facts as the ALJ saw it, then it seems to me
2 there ought to be some period of time for some public disclosure
3 of that alternative decision.

4 In the case I was talking about, for example, the ALJ
5 had made a certain decision. The Commissioners, for some reason
6 or other, decided they didn't like it, went to an alternative
7 decision, and that's okay, but then the Commission voted upon it
8 the next day, before there was any notice to anybody that there
9 was an alternative decision.

10 And so, it seems to me that, at least some period of
11 time, and I'm not prepared to say what that is -- maybe a week,
12 maybe two weeks, maybe 30 days -- so that if in fact there's
13 going to be a decision not based upon the ALJ's taking
14 testimony, do you have comment on that?

15 MR. KNIGHT: Well, I myself, I have to be careful
16 here, because I think there's no question that there should be
17 sunshine on alternatives.

18 But again, it gets down to the issue, from my
19 personal point of view, is how that is going to be instituted.
20 Because if there are -- at what point is there a substantive
21 change in that a ruling has to go before the public? And
22 secondly, on how many days do we have to wait for that decision?
23 I think those are two very key variables that have to be taken
24 into consideration before, I guess, I would agree to whatever
25 proposition is on the -- personally would agree to the
26 proposition put on the table, because you do run the risk of,
27 again, delaying procedures.

28 And I have learned through this past six months that

1 in some cases, there are strategies from parties in order to
2 delay decisions coming out.

3 So, I guess in spirit, I would accept that there
4 needs to be a sunshine on alternate decisions, but depending
5 upon how, again, inflexible that rule is, we have to concentrate
6 on it.

7 SENATOR ROSENTHAL: On another subject, recently you
8 attended two meetings of Commissioners which were essentially
9 secret meetings. No notice, no agenda, no public allowed. And
10 the Attorney General's Office said that these meetings should
11 have been open to the public. Told the Commissioners that.

12 Given the controversy surrounding the Commission's
13 conducting business in private, what are your beliefs about
14 public access and open meetings?

15 MR. KNIGHT: Let me preface my remarks by saying that
16 unfortunately, the California Public Utilities Commission has
17 got itself into a position that, what is being touted in the
18 newspapers that there are all kinds of secret meetings going on,
19 and that is -- at least in my six months, that is certainly not
20 the case.

21 In this particular instance, the issue came up. We
22 were under tremendous pressure, not only because of the case
23 that you earlier referenced on how a decision came to a
24 conclusion, but additionally, with the changes going on in the
25 industries, myself and my fellow colleagues recognized there are
26 some internal changes that have to take place. Talking about
27 those kinds of internal changes, one has to deal with people's
28 careers, their livelihoods, what their jobs are, and it gets

1 down to some very specific instances.

2 The Bagley-Keene Act, which you're referring to in
3 terms of allowing public access to all Commission proceedings,
4 the interpretation that four of the Commissioners, and I being
5 one of them, came to was that the meeting that you referenced,
6 the agenda was tightly controlled, in that we were going to talk
7 about the internal changes, and the shifting around of
8 personnel, and the shifting around of budgetary dollars and
9 resources. And we felt that that was a sensitive enough issue
10 that the Bagley-Keene Act allowed us to act under that legally.

11 We took two precautions. At the time we had the
12 meeting, and you say there were two, and that's correct, we
13 penned a letter to the Attorney General's Office, telling him
14 that that was our interpretation of the Bagley-Keene Act. So,
15 we acted, I think, in good faith, that we noticed the Attorney
16 General's Office about that meeting and about what the agenda
17 was going to entail.

18 Additionally, and I made the recommendation and my
19 other colleagues agreed, we decided to tape the meeting. So, I
20 took my little tape recorder, and during the course of both
21 meetings, we recorded it, and the transcripts are being prepared
22 as we speak now. So that the idea being, in case there was --
23 there were other people, or the majority of people, that did not
24 agree with our interpretation of Bagley-Keene, that we would
25 have a record that we could probably stand next to and say that
26 was the intent of the meetings, and that was the -- we were
27 trying to attempt to make the necessary changes internally in
28 good faith, and that there were no meetings that had to do with

1 any adjudicatory cases, or what have you.

2 SENATOR ROSENTHAL: Well, I think that when that
3 record is available, we'll then ask the Attorney General whether
4 or not the subject matter was subject to participation by the
5 public.

6 You've already touched upon a couple of other things
7 that I'm going to skip.

8 Finally, describe your views on the role of
9 government in regard to the so-called information super highway.

10 MR. KNIGHT: One of the most exciting parts of
11 working at the Commission is that we are able to participate in
12 this much, to my thinking, over-used phrase: information super
13 highway. And we are -- have the opportunity to create the
14 framework with which, to my thinking, telecommunications can be
15 a world class industry here in California.

16 The role of government, I think in this case,
17 challenges the California Public Utilities Commission, which
18 historically has been one of command and control, where we tell
19 our utilities exactly what to do. We set very strict rules of
20 entry for people to be able to participate in this business.
21 And now that is being changed, because there are more
22 competitors on the horizon, that the marketplace will end up
23 playing the role that the Commission, as surrogate, has
24 historically played.

25 To my way of thinking, our goal is to set the playing
26 field to be level for all participants to be able to come in,
27 and for us to be on the sidelines to make sure that California
28 consumers are not harmed in terms of potential consumer fraud,

1 or services that don't deliver the benefits that Californians
2 are entitled to, and that we allow these companies to
3 participate in a growing industry that, I think, is going to
4 benefit California in the long run.

5 SENATOR ROSENTHAL: It could lead to many new
6 industries. Of course, we're going to have to figure out how to
7 pay for it. We're also going to have to figure out how to keep
8 the consumers, the public, informed about what's taking place.

9 There's so many changes taking place daily in
10 telecommunications that the average person out there has no way
11 of keeping up with it. So, we need some education, perhaps,
12 from the Commission, or legislation, to help them understand
13 what's happening, and figure out how to pay for it.

14 Thank you very much.

15 SENATOR AYALA: Mr. Chairman.

16 CHAIRMAN LOCKYER: Senator Ayala.

17 SENATOR AYALA: I wish to follow up on Senator
18 Rosenthal's questions in terms of the PUC.

19 Do they come under the Brown Act?

20 MR. KNIGHT: Bagley-Keene. I think the Brown Act is
21 for local governments, and the Bagley-Keene, I guess, is for
22 state.

23 SENATOR AYALA: Not for state-level organizations or
24 committees?

25 MR. KNIGHT: I don't think so. I'm not a lawyer, but
26 I think it's the Bagley-Keene.

27 SENATOR AYALA: It's local governments only.

28 Thank you.

1 CHAIRMAN LOCKYER: Senator Rosenthal had asked about
2 the role of the PUC with respect to the information super
3 highway, especially as it relates to educational information.

4 Is there a similar explosion of activity in other
5 technological areas, like, let's say, wireless communications?

6 MR. KNIGHT: Yes. We have just instituted OII on
7 wireless because that is an area that is obviously exploding,
8 and there's a lot of new companies looking on, not just cellular
9 companies, but all the way to satellite kinds of technologies.

10 And we have a proceeding that is about to begin very
11 soon, I guess in the next few weeks or so, where we're going to
12 investigate those kinds of areas of concern for the PUC and
13 opportunities for California. We're taking commentary from the
14 public on that technology.

15 CHAIRMAN LOCKYER: Do you have a feeling about how
16 the role of the PUC might change with respect to it?

17 MR. KNIGHT: Well, there's no question that I think
18 that we'll be an umbrella over almost all the utilities that we
19 manage, including, I think, whatever comes out of the OII
20 process for wireless.

21 I think you will find that the role of the PUC, and
22 the role that I think I'm committed to, as I said in my earlier
23 remarks, that you will find the Commission far more committed to
24 issues of consumer safety, consumer protection, and I dare say
25 even issues of security, particularly when you're dealing with
26 telecommunications. So, we will be more, I think, in a consumer
27 protection mode than we have in the past.

28 That's not to say that there won't be rules and

1 regulations for us to manage that which is newly defined as
2 monopoly kinds of businesses. There we would still maintain our
3 historical role as managing the utilities.

4 CHAIRMAN LOCKYER: There are proposals to change the
5 jurisdiction of the Energy Commission and the PUC. I guess some
6 of the ideas contemplate shifting functions from PUC to Energy,
7 from Energy to PUC, or eliminating either.

8 Have you had an opportunity to review those ideas,
9 and can you share any thought about how the PUC, or how you
10 would view, working through that discussion?

11 MR. KNIGHT: Well actually, we're in the process of
12 going through that review right now. We have a full panel
13 hearing with some past Commissioners that would present their
14 ideas and how we best should manage our agency and the role it
15 should play.

16 I am not as familiar with some of the duties that the
17 CEC had. I do recognize that some of those duties may come to
18 the Commission.

19 I'm withholding judgment until I get all the
20 information from some of these full panel hearings we have
21 coming up this week and, I think, next week.

22 CHAIRMAN LOCKYER: What's the toughest decision that
23 you've had to render so far as a Commissioner?

24 MR. KNIGHT: The toughest decision. Actually, that's
25 a tough question.

26 Every day there seems to be one, but if I had to
27 focus on two, I guess, to cast my vote to turn around the IRD
28 process that Senator Rosenthal was alluding to. Because I did

1 not participate in the decision, I thought that the mere
2 inference that there was any impropriety going on meant that I
3 think we should have rescinded the decision, and to open up the
4 information to the public about what had happened and what had
5 not happened.

6 I had had a lot of advice coming in as a newcomer
7 that it's always easier to try to make the safe decisions. But
8 I figured as long as I'm sitting in the chair, I'm going to --
9 if I can get the information and educate myself quickly enough,
10 I would make the call. That was a tough one.

11 The other one was the Pac Tel spin-off. Again, it
12 was a very contentious, hotly debated decision. I had time
13 enough to hear all parties, and I think I made personally the
14 right decision based on the information that was presented to
15 me. And I guess that would probably be the second toughest.

16 SENATOR ROSENTHAL: Mr. Chairman, in support of the
17 Commission, when it was brought to the Commissioners' attention
18 on the IRD, they did stop that decision from proceeding to take
19 another look at it. So, I just want to indicate that it didn't
20 just go through anyway.

21 MR. KNIGHT: Thank you, Senator.

22 CHAIRMAN LOCKYER: Are there other questions from
23 Members?

24 Is there anyone present who would like to indicate
25 their support for the nomination or opposition?

26 MR. DOYLE: Chairman Lockyer, Members of the Rules
27 Committee, my name is Don Doyle. I am currently President of
28 the Junior Achievement Organization for the six Bay Area

1 counties, and before that was with the Chamber of Commerce of
2 San Francisco.

3 A few years ago, we sought out Jessie Knight to come
4 with us, and our organization is made up, as he said, in excess
5 of 2,000 members; 80 percent of those are small business. And
6 we needed someone like Jessie, with his talents, with his
7 background, to help us cultivate that area of our membership.

8 You all have received letters from me, and you've
9 heard his testimony, and I have nothing to add to that, except
10 to ask your consideration for his job as a Commissioner of the -
11 California Public Utilities Commission.

12 CHAIRMAN LOCKYER: Thank you.

13 Any last questions?

14 Was there anyone else that would wish to comment?

15 What's the pleasure of the Committee?

16 SENATOR CRAVEN: Move.

17 CHAIRMAN LOCKYER: We have a motion by Senator Craven
18 to recommend confirmation.

19 Call the roll, please.

20 SECRETARY WEBB: Senator Ayala.

21 SENATOR AYALA: Aye.

22 SECRETARY WEBB: Ayala Aye. Senator Beverly.

23 SENATOR BEVERLY: Aye.

24 SECRETARY WEBB: Beverly Aye. Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Petris Aye. Senator Craven.

27 SENATOR CRAVEN: Aye.

28 SECRETARY WEBB: Craven Aye. Senator Lockyer.

1 CHAIRMAN LOCKYER: Aye.

2 SECRETARY WEBB: Five to zero.

3 CHAIRMAN LOCKYER: Thank you, Mr. Knight.

4 MR. KNIGHT: Thank you, Senator. Thank you, Members.

5 CHAIRMAN LOCKYER: Best wishes and good luck.

6 For purposes of our stenographer, we would like to
7 take a five-minute break.

8 [Thereupon a brief recess was taken.]

9 CHAIRMAN LOCKYER: I guess the next item is Mr.
10 Johnson. Give us a minute to locate a couple of folks. Well, I
11 guess they're expected momentarily.

12 So, Mr. Johnson, if you'd like to begin, perhaps you
13 have some general comments you'd like to make regarding the
14 appointment and your qualifications.

15 MR. JOHNSON: Yes, may I have five minutes, sir?

16 CHAIRMAN LOCKYER: Sure.

17 MR. JOHNSON: Mr. President of the Senate, honorable
18 Senators, I, Perry O. Johnson, respectfully submit that I am
19 abundantly qualified to fulfill the duties of one of the seven
20 Commissioners of the Workers' Compensation Appeals Board.

21 My qualifications flow first from a balanced
22 professional background as a lawyer having experience in the
23 area of litigating industrial injuries. Further, I submit that
24 I have lived life experiences which have instilled in me
25 particular sensitivities which few Commissioners of the WCAB
26 have brought to the Board.

27 But first, my professional background has had me
28 represent hundreds of injured workers in a system I'd submit to

1 be somewhat purer than the California workers' compensation
2 system insofar as the fair awarding of benefits to persons
3 injured or afflicted with illnesses related to employment.

4 I also have had ample experience in defending
5 employers in proceedings before the Workers' Compensation
6 Appeals Board in the State of California. My work as a
7 litigator has given me a practical appreciation of the rules and
8 legal concepts in this complex, sometimes contradictory area of
9 the law.

10 Specifically in representing the injured workers, the
11 United States Army afforded me the opportunity in 1977 to come
12 to California while on active duty as an Army lawyer; that is, a
13 Captain in the Judge Advocate General's Corps at the Presidio of
14 San Francisco. I served some 22 months -- May of 1978 through
15 March of '80 -- at the Physical Evaluation Board. That Board is
16 charged with the responsibility to effect administrative
17 hearings for soldiers faced with medical discharges due to
18 injuries and illnesses arising in the line of duty. In holding
19 the title of Counsel with the Physical Evaluation Board, I
20 represented claimant soldiers in more than 300 formal
21 evidentiary hearings.

22 I possess vivid recollections of men and women in
23 physical and mental pain. I can never forget the anguish that I
24 took on in representing the interests of workers who happened to
25 have worn the uniform of the United States Army, who looked
26 towards the uncertainty of the future in coping with severed
27 limbs, significant orthopedic disabilities, and diagnosed
28 psychiatric illnesses.

1 In this state, as a member of the Bar, I've been a
2 staff attorney for the State Compensation Insurance Fund for the
3 period 1980 through April of '93. That experience gave me the
4 opportunity to represent the interest of many employers in
5 proceedings at district offices of the WCAB, primarily in San
6 Francisco and Stockton. Thus, I have experienced first-hand the
7 frustration and turmoil of employers, mostly small concerns,
8 confused by a system which results in significant insurance
9 premiums, yet to such employers, there's a perception that the
10 system lacks the means for their fair participation.

11 My qualifications further arise out of a sound
12 educational experience in the parochial schools of Chicago,
13 Illinois and New York City, with a public high school education
14 in the Commonwealth of Virginia, a college education in a
15 wonderful, historic Black college, the Hampton Institute in the
16 State of Virginia, and a law school education at the Catholic
17 University of America.

18 That education enabled me to sit for the Virginia
19 State Bar in 1976, and the California Bar in 1981, and
20 successfully pass the exams in one sitting.

21 Lastly, as an immigrant to the United States, having
22 been naturalized at age 21, I possess a sincere belief in the
23 principles of this great country of ours. California and
24 America I truly love, and I've never given up on the ideals of
25 the quest for justice and that there are rewards for hard work,
26 and such can be attained in this great country.

27 Based upon my sincere belief in America, I truly
28 believe that the pain of learning of the -- I would submit

1 respectfully, the ill-founded opposition to my confirmation,
2 that I will -- I would ask to be fairly evaluated by the
3 honorable Senators today based upon my total record.

4 I come here with the hope that the art of politics,
5 and the somewhat character assassination visited upon me should
6 not prevail, but that I should be confirmed as a Commissioner of
7 the Workers' Compensation Appeals Board to serve out the balance
8 of the term of office bestowed upon me by the honorable Pete
9 Wilson, Governor of the State of California.

10 Thank you, sir.

11 CHAIRMAN LOCKYER: So, it's your view that Governor
12 Wilson, there's no political element to his appointment?

13 MR. JOHNSON: No, sir. I wasn't advancing that, not
14 at all.

15 CHAIRMAN LOCKYER: Let me just ask if there are
16 questions from Members of the panel, first of all?

17 Perhaps you could just start by informing us if there
18 have yet been cases that have reached you that reflect the
19 changes in the law that were done --

20 MR. JOHNSON: The 1993 legislation, no, sir. Of
21 course, that affects injuries occurring on or after January 1 of
22 '94, so certainly cases have not reached the Board at this time.

23 CHAIRMAN LOCKYER: No opportunity to evaluate that
24 body of law yet to see what might have worked or not worked?

25 MR. JOHNSON: No, Senator. I'm pretty sure it'll be
26 some time before that's possible, just in terms of the course of
27 litigation and the --

28 CHAIRMAN LOCKYER: Do you have any thoughts about

1 what we ought to call the judges: referees, or hearing
2 officers, or whatever?

3 MR. JOHNSON: Well, I have expressed my views to my
4 fellow Commissioners. I certainly looked at the legislation,
5 and the legislation at this time has the designation of Workers'
6 Compensation Referee. However, these are hard-working and
7 sincere public servants who have labored under the title of
8 Workers' Compensation Judge.

9 The Board rules that were promulgated for operation
10 for January 1 of this year retain the phrase "Workers'
11 Compensation Judge." However, I have related to my fellow
12 Commissioners that we should look at what the Legislature has
13 handed us and that the title that should be used is "Workers'
14 Compensation Referee," and hence, through my remarks, I'll make
15 reference to the term "Workers' Compensation Referee."

16 CHAIRMAN LOCKYER: Do you have any thought about what
17 the appropriate characterization should be?

18 MR. JOHNSON: Sir, I think that's a function of the
19 Legislature, in that the law of workers' compensation is wholly
20 statutory.

21 CHAIRMAN LOCKYER: Does any particular decision or
22 type of decision come to mind as the most troublesome matters
23 that you struggle with?

24 MR. JOHNSON: Oh, yes, there are several; several
25 very difficult cases, and practically all the cases are very
26 tough.

27 I've been informed that the Board receives some three
28 percent of the cases that are litigated in the state. The

1 questions that come are very difficult. The constraints of time
2 certainly bar us from developing the opinions in ways that we'd
3 really like, but I think the staff of the Board has done some
4 marvelous, marvelous work.

5 There are cases that have certainly been cited in the
6 letters that have been submitted in opposition to me that I'd
7 like to certainly touch upon. One case that continuously comes
8 up is the Sanchez vs. Aetna Insurance, which I think has been
9 mistakenly characterized as an attempt of the Board to introduce
10 fault into the system. That particular case dealt with, as we
11 looked at it, the range of compensable consequences. The case
12 turned on a worker who suffered a crushing injury to the foot.
13 During the course of treatment, he had an infection to the bone,
14 called osteomyelitis, a very serious condition. Also during the
15 period of treatment, he was diagnosed as having diabetes.

16 Several months of extensive treatment were afforded
17 the injured worker. Recovery seemed to have been apparent, in
18 that the worker returned to work and was working for some four
19 months.

20 On a weekend, following what appeared to have been a
21 full recovery, in a desert community of this state, the
22 gentleman, at an amusement park, a water park, walked upon very
23 hot cement. The cement was so hot as to cause blistering on the
24 feet the next day. Of course, treatment was procured, and
25 unfortunately, osteomyelitis was detected with this particular
26 injured worker.

27 The Board was troubled by the case, in that upon
28 receipt, it was obvious that both the parties had intentions of

1 seeing the matter proceed through the Court of Appeals. As
2 you're well aware, a Petition for Reconsideration to the Board
3 is a condition precedent before judicial review can be affected.

4 The Commissioners on the particular panel struggled
5 with the case for some time. The Workers' Compensation Judge
6 extended the provision of medical treatment -- the Workers'
7 Compensation Referee, rather. Did not award temporary
8 disability indemnity. His theory of disallowing TDI was
9 unacceptable to the Board, and the Court of Appeals, when they
10 finally looked at the case, found the judge's position
11 untenable.

12 Looking at the facts of the case, the Commission, the
13 majority, of which I concurred, felt that the injured worker,
14 having knowledge of his serious past injury, in light of his
15 diabetic condition, acted in such a rash fashion as to border on
16 gross negligence -- or, not gross negligence, but negligence.

17 The Court of Appeals did not feel that the panel
18 properly handled the case and deemed that we had erred. The
19 case was reported in the "California Compensation Reporter," the
20 comments in italics at the end of the reported case. The
21 editor's notes point out that this area of workers' compensation
22 law is difficult.

23 "The case sheds a valuable light on the
24 range of compensable consequences of an
25 industrial injury. In attempting to raise
26 the dicta in Beatty ..."

27 And that was a case that the panel discovered, Beatty:

28 "... to raise the dicta in Beatty to the

1 level of the rule of law, the panel chose
2 a record that was inadequate for applying
3 such a rule. If the opinion remains
4 unpublished, the panel may again seek to
5 establish that under Beatty, rash conduct
6 breaks the chain of causation between
7 original injury and a subsequent injury or
8 exacerbation."

9 It's interesting to note that this very area of the
10 law, the range of compensable consequences in workers'
11 compensation, was written 24 years ago, 21 Hastings Law Review,
12 page 609, by the esteemed Professor Arthur Larson, who many
13 would deem to be one of the great thinkers and scholars in
14 workers' compensation. Professor Larson has certainly
15 recognized that there are those acts which can lead to a denial
16 of benefits for nonindustrial second injuries that do not
17 directly arise out of employment activities. And rather than --
18 that's one of the more troublesome cases.

19 CHAIRMAN LOCKYER: Are there areas of the law where
20 you see a case come by that you wish the law were different,
21 that it would either confer or deny benefits?

22 MR. JOHNSON: Before the last phrase I had a
23 response, but one of the most troublesome areas that we, sitting
24 as a Commissioner, are faced with arise out of Labor Code
25 Section 5505.5, which is essentially the battle between
26 insurance companies on matters of contribution. There're too
27 many of those cases that we see, and we always wonder why the
28 insurers can't settle and resolve their disagreements with

1 regard to who is going to pick up the bill. 5505 is convoluted,
2 and some of the cases essentially go off in different
3 directions, but the Coltharp and then there's the Western
4 Growers case, which essentially go in different directions.

5 CHAIRMAN LOCKYER: That's as to which carrier is
6 liable --

7 MR. JOHNSON: Yes.

8 CHAIRMAN LOCKYER: -- for what portion of the claim.
9 Do you ever have a feeling like, this is someone
10 who's been denied benefits that should get them, or the
11 converse, someone who's getting benefits that shouldn't, but the
12 law necessitates that act on your part? Have you bumped into
13 that feeling when you review cases ever?

14 MR. JOHNSON: Well, one area of the law that's very
15 difficult is, of course, those statutes that are found in the
16 area of 3212, and of course, there's -- that's the area where
17 essentially law enforcement, firefighters, public servants, are
18 given certain presumptions of compensability. In fact, a case
19 that was just handed down reversed both the Workers'
20 Compensation Judge and the Board. The Court of Appeals seems to
21 have taken a keen interest in this particular regard.

22 I don't seem to have that with me.

23 CHAIRMAN LOCKYER: Just as you recall the general
24 law, not in a specific case, the Board ruled --

25 MR. JOHNSON: It essentially sprang out of a
26 firefighter who had contracted cancer. He had shown that during
27 the course of his employment, he was exposed to certain
28 carcinogens.

1 The Board felt that based upon 3212, that the
2 benefits should flow. The Court of Appeals felt that there
3 wasn't a linkage, if you will, between the exposure some years
4 back and the development of the carcinogens [sic]. We're
5 somewhat still baffled by how the Court went in that direction.

6 Further legislation in this area might be
7 appropriate.

8 CHAIRMAN LOCKYER: I think that might be the San
9 Leandro firefighter case.

10 MR. JOHNSON: It was just handed down on about March
11 25th, relatively recent.

12 CHAIRMAN LOCKYER: I'm going back a couple of years
13 to the one I'm thinking about, which was the causality debate
14 over when the cancerous condition had metastasized. I think
15 that predates your service on the panel.

16 Other questions from Committee Members? Shall we
17 take some testimony?

18 SENATOR CRAVEN: I'd like to hear anybody.

19 CHAIRMAN LOCKYER: Those that would wish to, perhaps,
20 say something in support of the appointment?

21 MR. WASHINGTON: Mr. Chairman, Members, Willie
22 Washington with the California Manufacturers Association.

23 We support the appointment. In a case similar to
24 this, where we don't have the direct contact ourselves, we do
25 have an interest in the Commissioners and what they do, I, in
26 turn, contacted many of the members and the attorneys that
27 represent them to try to get an idea of the work that the
28 Commissioner had done thus far.

1 Actually, the report that I got, and in reading a
2 little bit of background about him, he certainly seems to be
3 very well qualified for the position. Some of the things that
4 we always concern ourselves with in positions that are appointed
5 positions is the qualification of those people being appointed,
6 so he certainly seems to have all of the background.

7 And when I looked into it a little bit further, some
8 of the areas in which he has practiced, sometimes it's difficult
9 to get people to leave the practice to go and sit on a board.
10 So, actually, I was very, very pleased to see that the
11 individual had also had first-hand knowledge and practice in the
12 field prior to being appointed to this position.

13 There was some question, and I became aware of the
14 fact that there was some opposition to the confirmation, and so
15 I was motivated to look a little further to try to find out what
16 the problems were. Now, I didn't go into the specifics, try to
17 learn about the individual cases and all the other items. I was
18 basically more concerned about the overall performance of
19 Commissioner Johnson.

20 In looking at his performance, I was actually very,
21 very surprised by the fact of the activity on his part, the fact
22 that he'd been a very, very active Commissioner, and that he's
23 participated in about 1200 cases. In asking about some of the
24 other Commissioners and the level of participation, I found out
25 that that's really quite high. It certainly shows a high level
26 of interest and a high level of commitment to being a member of
27 the Commission.

28 Also, I asked about the members, what their

1 experience had been with his decisions, and the information that
2 I got was that he was rated very high, especially in light of
3 the fact that he's had so many opportunities to be looked at and
4 to be judged as to the type of decisions and so forth that he
5 had made. I was also told that he has certainly demonstrated a
6 great deal of commitment to this position. No one that I talked
7 with had indicated that his opinions were either intemperate or
8 improper.

9 So, I come here today to say that we support
10 Commissioner Johnson, and we would certainly urge your
11 recommendation for confirmation.

12 CHAIRMAN LOCKYER: There are other letters of support
13 in our file that I'll make note of for the record.

14 Is there anyone else present who wishes to comment on
15 the positive side?

16 If not, we'll ask for any opposition comments to be
17 made.

18 MS. BROWN: Good afternoon, Senator Lockyer, Members.
19 Melissa Brown for the California Applicants'
20 Attorneys Association.

21 Our Association has filed a letter of strong
22 opposition to the confirmation of Commissioner Johnson.

23 We had asked the Rules Committee to provide cases, or
24 asked the WCAB to provide some cases for our review because we
25 were concerned with reports from our members as to the decisions
26 that were coming out of the Appeals Board authored by
27 Commissioner Johnson, or decisions in which Commissioner Johnson
28 had filed a dissent.

1 We are mindful that the sitting Commissioners on the
2 WCAB are the Governor's appointees. We are mindful that the
3 Governor certainly has the right to appoint those whom he feels
4 reflect a particular political bias, and our organization
5 traditionally does not step forward to oppose Commissioners'
6 confirmations simply because they are made by a particular
7 Governor of a particular party.

8 However, the reports were coming in from our members
9 that Commissioner Johnson's opinions seemed to be out of line,
10 far to the right, and indicated bias against workers, and a
11 misstatement of the law, and a misunderstanding of his role as
12 an appellate officer. And indeed, those concerns were confirmed
13 when we reviewed cases that our members had provided as well as
14 cases that were provided by the WCAB.

15 Our letter of March 14th, 1994, I think, sets forth
16 with specificity our concerns. We were saddened to see that in
17 several decisions in which Commissioner Johnson filed a dissent,
18 in all of those cases but one, his dissent would take away the
19 benefits to the worker that the trial judge had awarded and that
20 the two other Commissioners had felt were appropriate.

21 CHAIRMAN LOCKYER: Let me interrupt, if I may, just
22 to ask Mr. Johnson to respond to this point.

23 Apparently there are 36 written opinions in which an
24 employer appealed a decision, and the panel decided against the
25 defendant employer. That is, 36 of them in which you were on
26 the panel. So, there were two voting opposite you, that you
27 were the dissent in 35 of the 36 cases, always on the employer's
28 side of the issue in 35 of the 36.

1 Could you comment on that general pattern?

2 MR. JOHNSON: Well, sir, I certainly during the
3 course of performing my duties as a Commissioner have not kept
4 any tally, and I certainly don't make decisions based upon any
5 predisposition.

6 One of the most difficult things of being a judge
7 certainly is to throw off the mantle of being an advocate, being
8 a lawyer. It is a difficult process indeed.

9 I look at every case on its own merits. I've
10 exercised the prerogative of a Commissioner, namely to voice
11 disagreement. I've looked at -- just as a general comment, I
12 would say that I, in looking at the cases, I would adhere to the
13 rules of substantial -- substantial evidence, look at the entire
14 record, recognize that the Board, Workers' Compensation Appeals
15 Board, make its own findings on credibility, can certainly re-
16 weigh the facts.

17 Based upon my experience, my thorough examination of
18 the files, I felt bound to take the positions that I did, not
19 based upon any notion of who's going to win or who's going to
20 lose. The evidence I analyzed, and I came up with the results
21 that I did.

22 CHAIRMAN LOCKYER: Senator Craven.

23 SENATOR CRAVEN: If I may asked the lady a question,
24 is there any directional or geographic boundaries to the law?

25 MS. BROWN: I'm not sure what I -- if I understand
26 your term of geographic boundaries, Senator; however, certainly
27 a Commissioner is bound by the statutory law, the case law, and
28 the California Constitution.

1 SENATOR CRAVEN: Yes, in other words, the law
2 prescribes the boundaries; doesn't it?

3 MS. BROWN: Correct.

4 SENATOR CRAVEN: Now, when it does that, does it not
5 also afford an option for those to interpret the law?

6 MS. BROWN: The options for an appellate judge are
7 prescribed, Senator, and the proper function of the appellate
8 judge is not to re-weigh the evidence, as we have seen in many
9 instances in Commissioner Johnson's case, but the Commissioner
10 is required to overturn the trier of fact only if there is
11 considerable evidence of a substantial nature to compel that.

12 And the Supreme Court in the Garza case has said that
13 it is only in rare occasions where the appellate judge -- our
14 system of workers' compensation, the Commissioner -- should put
15 forth his own findings, substitute his or her own findings for
16 that of the trial judge and re-weigh the evidence.

17 So in that respect, Senator, I don't believe that a
18 Commissioner has unbridled options to re-weigh and interpret the
19 law. Rather, they are proscribed by the --

20 SENATOR CRAVEN: Even if the law offers no
21 proscription?

22 MS. BROWN: The law, sir, does offer proscriptions.
23 The law requires that the law be liberally construed. The
24 Supreme Court, again, has set forth the requirements of the
25 Commissioner in interpreting the law and the facts.

26 SENATOR CRAVEN: Are you an attorney?

27 MS. BROWN: Yes, sir.

28 SENATOR CRAVEN: In your experience as an attorney

1 and, perhaps, in representing clients, or being in the milieu of
2 the legal profession, haven't you seen judges, some at a brisk
3 step, some very laggard, and some in between as it relates to
4 the interpretation? Do they all, you know, act just like that
5 on key?

6 MS. BROWN: Oh, no, of course not.

7 SENATOR CRAVEN: If they do, you tell me where that
8 happens, because I'm considerably older than you, and I've never
9 seen it happen.

10 MS. BROWN: No, of course not.

11 SENATOR CRAVEN: Well then, why are we getting so
12 terribly excited about a man who, in the words of a famous
13 American once said, we need a standard to which we must repair,
14 and he has found that standard in his own mind and within the
15 law. And he's being criticized for having done so.

16 MS. BROWN: Senator, he's been criticized by our
17 Association for misperceiving his role as a judge, or
18 misapplying the law, and evidencing a bias against a certain
19 segment of the system, and that's the basis of our criticism,
20 sir.

21 SENATOR CRAVEN: Well, would I be just untoward if I
22 were to say, when you say that he was far too right, is that
23 spelled out which is one of the options that you have to indict
24 him within your own mind?

25 MS. BROWN: Sir, each individual and each judge,
26 obviously, brings their own experience and background, political
27 and other persuasions, to the bench.

28 However, in this instance, we have seen case after

1 case where the decisions are out of line with what is already a
2 conservative board. And those decisions, which would time after
3 time substitute his own decisions for the trial judge, misapply
4 the law, misapply the facts, not look at the entire record,
5 those types of qualities and behaviors are not appropriate for a
6 judge.

7 SENATOR CRAVEN: Well, if he, to use your word,
8 misapplies, is there no agency, or person or persons who can
9 control that?

10 MS. BROWN: Parties who are aggrieved can file their
11 appeal with the Court of Appeals, sir, and the segment of the
12 population that I represent has limited resources to do that.

13 SENATOR CRAVEN: You represent injured persons.

14 MS. BROWN: I represent working people of
15 California.

16 SENATOR CRAVEN: Well, I understand that, and I
17 understand the feeling that you must have.

18 I would not -- I am not qualified -- but I would not
19 want to sit in a position of a judge, hearing testimony from or
20 about the people that you represent, because it's a traumatic
21 experience, at least it would be to me. And I do not have, I
22 suppose, the strength or the courage to find against them, even
23 though I may be pushing their case a little too much to make
24 them win.

25 Do you understand what I'm saying? That would be
26 difficult for me.

27 It was obviously not difficult for him. He doesn't
28 care where they came from, who they represent, or who represents

1 them. He says what he thinks.

2 And I find it very, very difficult, in fact, I find
3 it impossible, to be critical of him for that. That, to me, is
4 no grievous sin.

5 Enough said. What happened to the Chairman? He
6 leaped out. I'm it?

7 Well, if that be the case, would you like to say
8 something else?

9 MS. BROWN: I can continue. One of the things I've
10 learned in over ten years as a lawyer is, when a question
11 doesn't call for an answer, then shut up.

12 SENATOR CRAVEN: What you've said has been very, very
13 informative to me. I enjoyed your testimony.

14 MS. BROWN: Thank you.

15 Again, our letter of March 14th points out several
16 other areas where Commissioner Johnson has demonstrated that he
17 is results oriented. He spoke of one case, the Sanchez case,
18 where he apparently takes issue with our characterization of
19 that case as introducing fault into the system.

20 There are several other cases. The Thompson case,
21 where he would have -- he reversed the trial judge, and the
22 deceased worker's family then took nothing as a result of this
23 case, and basically would have had the injured worker
24 responsible for his own death because he failed to take high
25 blood pressure medication.

26 And those kinds of issues certainly have no place in
27 a decision of a Workers' Compensation Commissioner. If the
28 defendants wanted to argue negligence on the part of fault on

1 the part of the worker, they have a remedy that's called a claim
2 for serious and woeful misconduct. In none of these cases were
3 those claims ever filed; rather, Commissioner Johnson introduced
4 those issues on his own.

5 SENATOR CRAVEN: Tell me, I'm very unfamiliar with
6 your processes in this particular area. How many people sit in
7 judgment when you bring a client before them?

8 MS. BROWN: Well, on the initial trial level, there
9 is one judge.

10 SENATOR CRAVEN: That's the first one.

11 MS. BROWN: Right, and then the Appeals Board has
12 seven Commissioners.

13 SENATOR CRAVEN: Seven?

14 MS. BROWN: Yes, sir.

15 SENATOR CRAVEN: That's what I was trying to get to.

16 MS. BROWN: Right.

17 And I have a colleague here who has worked with the
18 Appeals Board. If you have more questions on the workings of
19 the Appeals Board, he is available to answer those questions.

20 SENATOR CRAVEN: Let me ask you, and this might be
21 difficult for you to answer, but how many times has the action
22 or the opinion of Mr. Johnson affected in a negative sense what
23 you consider to be the best interest of the client?

24 MS. BROWN: The injured worker client.

25 SENATOR CRAVEN: Injured worker client.

26 MS. BROWN: Well, we reviewed approximately 120
27 decisions, and I can do a rough tally, if you'd like. I didn't
28 tally all of them up.

1 SENATOR CRAVEN: If you just have the figures in your
2 mind, I'll take your word.

3 MS. BROWN: In my recollection of reviewing those, in
4 well over two-thirds of those.

5 SENATOR CRAVEN: Two-thirds?

6 MS. BROWN: Well over two-thirds, sir.

7 SENATOR CRAVEN: Now, does that mean the benefits
8 which you sought for your injured client were then denied?

9 MS. BROWN: In some of those cases, no. You heard
10 the reference to 36 cases in which the majority denied the
11 defendant's appeal, which denied -- which uphold the decision of
12 the trial judge. In all but one of those cases, Commissioner
13 Johnson filed a dissent, which, had it been the majority, it
14 would have taken away the benefits.

15 So, in 35 cases we reviewed, the worker did prevail
16 in spite of Mr. Johnson's dissent and misapplication of the law.

17 SENATOR CRAVEN: So in other words, his -- what I'll
18 call for the want of a better word -- negativist attitude has
19 not always been a crushing blow to the client, the injured
20 client.

21 MS. BROWN: Not always. In many cases it has,
22 though.

23 SENATOR CRAVEN: Well, you know, you have been around
24 here among us for years, I presume; have you?

25 MS. BROWN: I've been a lawyer for ten --

26 SENATOR CRAVEN: Well, that's a long time.

27 You know, I have served here not as long as Senator
28 Petris, not as long as Senator Beverly, but in that period of

1 time, I've taken to being a great admirer of certain of my
2 colleagues, men and women both.

3 But I find myself at times very much in opposition to
4 what they say, but I don't really think that their opposition is
5 so tremendous. I think it's very exciting to listen to because
6 it makes me think.

7 I think that man over there is caught up in that same
8 feeling. I think he wants to express himself as he feels it
9 inside.

10 And I really don't think he's trying to really go out
11 of his way to, you know, put the screws to the clients.

12 MS. BROWN: Well, I would differ in that assessment.
13 The difference in a philosophical debate, or an intellectual
14 debate, and a workers' compensation case is, these are people's
15 only chance. It is their case; it is their life; it is their
16 family's lives. So, it's a very, very serious matter that we're
17 dealing with.

18 SENATOR CRAVEN: I understand, and I appreciate your
19 comments. Thank you very much.

20 MS. BROWN: Thank you.

21 SENATOR CRAVEN: Is there anyone else who would like
22 to speak in opposition? Yes, come up, state your name, please.

23 MR. WILLIAMS: Senator Craven, my name is Barry
24 Williams. I am a practicing attorney in the field of workers'
25 compensation. I have been in the field for 26 years. I
26 presently practice with the firm of Boxer, Elkind and Gerson in
27 Oakland.

28 For three of the years, I was a Workers' Compensation

1 Judge, two years of which I served on the staff of the Workers'
2 Compensation Appeals Board as a staff judge and assistant
3 secretary, and from time to time, an acting Deputy Commissioner
4 sitting on the same panels that Commissioner Johnson sits on,
5 deciding cases. There are not very many of them, but that would
6 occur when there was an absence of enough Commissioners and
7 deputies to sit on the panels.

8 My main job was serving as a staff judge, supervising
9 six attorneys that prepared the opinions for the Commissioners.
10 And I might add that rarely do Commissioners write their own
11 opinions then and, I believe, now, although Commissioner Johnson
12 writes, I believe, many of his own opinions.

13 I'm a past President of the California Applicants'
14 Attorneys Association, am presently a member of the Board of
15 Governors. I serve as the Chairperson and a member from time to
16 time of the Amicus Curiae Committee of the Association.

17 As indicated in my testimony presented here today,
18 which I think has been made available to the Committee, and my
19 letter of opposition to Commissioner Johnson, it was I who was
20 assigned by the Board of Governors to collect and review
21 decisions of Commissioner Johnson when we were -- when we
22 learned, shortly after his confirmation, that decisions were
23 coming out that seemed to be out of the mainstream. And by out
24 of the mainstream, I don't just mean a conservative appointee
25 deciding cases.

26 I have related in my testimony, my written testimony,
27 the history of how, in the '60s and -- later '60s and early
28 '70s, Commissioners appointed by then-Governor Reagan took it

1 upon themselves, felt they had the power, to reverse the
2 decision of the Workers' Compensation Judge or Referee, carte
3 blanche, because of certain language in the Labor Code that
4 seemed on the surface to give that power.

5 However, in the late '60s and early '70s, the Supreme
6 Court and the Court of Appeals did come down with several
7 decisions which sharply restricted the power of the Appeals
8 Board to substitute its own opinion for that of the Workers'
9 Compensation Judge or Referee. Decisions such as Garza
10 determined that there had to be evidence of considerable
11 substantiality in order to reverse the decision of the Workers'
12 Compensation Judge or Referee. The Board was required to state
13 in detail the reasons for its decision after -- and show that it
14 had given careful consideration to all of the facts, and detail
15 its reasoned analysis and the substantial evidence or the
16 evidence on which it relied.

17 The Evans case, LeVesque also, determined that a
18 decision to be supported by substantial evidence had to be
19 substantial evidence on the record as a whole, and not just any
20 evidence that would support the decision.

21 Thus, the power of the Appeals Board to reverse is
22 not unlimited. And I would to, just for a second, go back to
23 the difference between the Public Utilities Commission and the
24 Workers' Compensation Appeals Board, because we heard some
25 testimony about that earlier today.

26 The Public Utilities Commission hearing officers or
27 administrative law judges do report to the Public Utilities
28 Commission, which is then free to make its decision. They do

1 not have the original power of decision as do Workers'
2 Compensation Judges or Referees.

3 Thus, it is not just in the power of a Workers'
4 Compensation Appeals Board Commissioner to reverse and assume
5 that, as Commissioner Johnson has stated in one of the cases we
6 reviewed, that he is the ultimate trier of fact and law. To be
7 sure, the Appeals Board can reverse decisions of the Workers'
8 Compensation Judge for proper reasons, both on the facts and the
9 law, but it is not an unlimited power.

10 And nowhere in the decisions that I reviewed of
11 Commissioner Johnson -- and I reviewed a good many of the 126
12 decisions that were presented in response to the Committee's
13 inquiry or request to the Board -- did I see an acknowledgment
14 of the power of the Commissioner, or what I see as the true
15 power of the Commissioner under the case law -- in other words,
16 I didn't see an analysis of the case law.

17 The case that I cited earlier, the Boyd case, Boyd
18 vs. Chevron Chemical, Commissioner Johnson did state that he was
19 charged with the responsibility as the ultimate trier of fact
20 and law, and I think that is a throw back to the late '60s and
21 early '70s, when the Workers' Compensation Appeals Board,
22 previously the Industrial Accident Commission, would take unto
23 itself the almost unlimited power to do whatever it wanted to do
24 in response to the record.

25 I also believe, based on my review of the decisions,
26 that Commissioner Johnson did misconstrue the law, misstated the
27 law, imposed fault on to the system. The Sanchez case is not
28 just a decision of the Board that we're critical of, with the

1 dissenting Commissioner Commissioner Gannon. The Court of
2 Appeals really did take the Board to task for what they did in
3 that case. You read that opinion, if one reads that opinion,
4 one cannot escape the implication that the Court is really
5 taking the Board to task.

6 That is basically the substance of my testimony. I
7 would certainly answer any questions that the Committee Members
8 have based on my review of the decisions, or any other matters
9 based on my practice with the Board and the Board's practice and
10 procedure.

11 As I indicated earlier, I am aware and familiar with
12 the Board's internal practices and procedures.

13 SENATOR CRAVEN: Have you not testified before us in
14 times past?

15 MR. WILLIAMS: I have.

16 SENATOR CRAVEN: Yes, I recall. And when I saw you
17 sitting up here, I thought, that man looks familiar to me.

18 Let me ask the Members of the Committee, is there
19 anyone who wishes to address a question to Mr. Williams?
20 Senator Ayala? I mention him because he's the fellow that
21 generally asks most of the questions, but you've evidently sold
22 him; he's not saying anything.

23 All right, thank you very much, Mr. Williams. We
24 appreciate your testimony.

25 Anyone else who wishes to speak? Mr. John Henning.

26 MR. HENNING: Mr. Chair, Members of the Committee,
27 Jack Henning, California Labor Federation.

28 We are in opposition to the appointment. With the

1 whole workers' compensation system as a shelter and a sanctuary
2 for injured workers, what chance does a worker have against
3 Chevron? Against any corporation? So, we hate to see these
4 shelters concepts of this system get weakened.

5 Now, on the argument of the free mind, we don't
6 question the intellectual integrity of the man before us, but
7 that isn't enough.

8 For generations in this country, we had a Supreme
9 Court made of men expressing the free mind, upholding a very
10 destructive system. That system came crashing down with Brown
11 vs. Board of Education.

12 But in retrospect, were those men who voted for the
13 perpetuation of the old order not voicing free minds? They
14 were.

15 But there's a social obligation that they never
16 understood, and there's a social obligation in workers'
17 compensation, and we really don't think that the gentleman with
18 us understands that.

19 That doesn't mean he should vote blindly for the
20 workers, but if there's a consistency to his voting against the
21 worker, we must speak out and say that that kind of an opinion
22 is out of social order, and so we are opposed.

23 SENATOR CRAVEN: Thank you very much, Mr. Henning.

24 Is there anyone else who wishes to speak? Yes, sir.

25 MR. REITER: I'm Charley Reiter, with the State
26 Building and Construction Trades Council of California,
27 representing the interests of construction workers in the State
28 of California.

1 We also are opposed to this candidacy. Labor has
2 become conditioned to not being treated fairly by the law in
3 this country. That's simply the history in the history books.
4 Workers' comp. systems have been at variance with that. They
5 have attempted to give us at least an even break.

6 In this instance, we feel the tendency is to go back
7 into the past and to affect fairness adversely, and for these
8 reasons, and those stated by others here, we are opposed to this
9 candidate.

10 Thank you.

11 SENATOR CRAVEN: Thank you very much.

12 Anyone else that wishes to offer comment, pro or con?

13 Any Members of the Committee?

14 If not, a summation, if you would.

15 MR. JOHNSON: Just a few comments.

16 As a member of the Commission, I certainly view my
17 responsibility as being bound by the law. I'm well aware of the
18 Garza rule, the rule of Garza. Garza holds that the findings --
19 when the findings of the Workers' Compensation Judge are based
20 upon ample, credible, sound evidence, such findings are to be
21 given considerable weight by the Board and should only be
22 overturned when there is evidence of substantial -- considerable
23 substantiality to the opposing proposition.

24 The key, as I see it, is the beginning of the
25 definition; namely, that the Workers' Compensation Referee has
26 ample, sound, credible evidence. The Board is given powers to
27 examine the complete record, to re-weigh the evidence, to
28 certainly make its own credibility findings.

1 I submit that my opinions have reflected an
2 examination of the record, that I have demonstrated through my
3 writings that the judges' findings are not based upon that
4 sound, credible evidence. And so, I was duty-bound to find to
5 the contrary.

6 Two cases have come up that I haven't touched on;
7 namely, the case of Jack Thompson vs. City and County of San
8 Francisco. That was a case where -- and all these cases are
9 very difficult, and one does not take lightly the proposition
10 that dependents, spouses or children, will be deprived of death
11 benefits. Here was an instance of an injured worker traveling
12 to his place of employment who suffered a subdural hemotoma, had
13 a stroke, and was transported to the hospital. This man had --
14 he was of average height, weighed 240 pounds. On autopsy, his
15 heart was found to weigh 725 grams as opposed to the average
16 heart weighing 40 grams.

17 It was found that this man had a long history of
18 hypertension. The record reflected that he had been advised by
19 his physicians to take hypertensive medication. Through
20 testimony from his wife and from others, this gentleman chose
21 not to take this medication, and as the physicians whom we
22 relied upon pointed out, that this man's demise was not due to
23 the conditions of his employment but rather to hypertensive
24 arteriosclerotic cardiovascular disease. It was a most
25 unfortunate -- unfortunate case.

26 The Boyd, the John Boyd vs. Chevron case, was another
27 very, very peculiar case. The case essentially resulted in a
28 100 percent permanent disability award issued to a gentleman

1 whose diagnosis really couldn't be pinpointed by any particular
2 physician. This gentleman had been, for a period of years, a
3 tanker truck operator for the Chevron Corporation.

4 The manifestations of his illness subsequent to his
5 employment by several months, up to a year, had one set of
6 physicians saying that he had early onset Alzheimer's disease.
7 Other doctors characterized it as dementia. Some doctors felt
8 it was organic brain syndrome. No doctor could put his finger
9 on it, but I was of the impression that the physicians retained
10 by the employer had much more persuasive, sound, and believable
11 evidence.

12 Essentially, the argument made by the injured
13 worker's representatives is that his exposure to petrochemicals
14 as a tanker truck operator led to this serious condition. Yet,
15 through the toxicologists, the epidemiology reports, there had
16 been not a single other case similar to this unfortunate case
17 involving Mr. Boyd.

18 Again, not looking at any prejudgment, but based upon
19 my independent and comprehensive examination of the record, I
20 felt bound to draft an extensive dissent.

21 And it's -- these cases are never easy to make.

22 CHAIRMAN LOCKYER: Do you feel like you've concluded?

23 I'm sorry. I had to run up to another committee to
24 cast a vote. I've had a nice summary from the staff and Senator
25 Craven as to what's transpired.

26 What there anything at this point --

27 MR. JOHNSON: Just in a nutshell, sir, it's
28 unfortunate that those who have exercised their right to oppose

1 me have not had an opportunity to review my full and complete
2 record.

3 I participated in, up through February 18, in 1,396
4 cases, and since February 18, I have been on several hundred
5 more cases.

6 I submit that I've been fair, balanced, and
7 even-handed. I've taken the extraordinary step of transposing
8 my deliberation sheets in some 81 cases in which I certainly
9 found in favor of the injured workers.

10 I'm sorry that members of the persons who -- members
11 of the California Applicants' Attorneys Association, and those
12 very distinguished members of the labor community, have not had
13 access to these writings.

14 That I've been absolutely perfect in the performance
15 of my duties as a human being, certainly I've erred. However, I
16 do submit that I have made great strides and endeavored to
17 perform in an admirable way.

18 The beginning of my workday is typically before 7:00,
19 always the first Commissioner there. Typically one of the last
20 to leave. I put in many a Saturday with regard to performing
21 these duties.

22 I would ask that my full record, my complete record,
23 as best that the Senators have had access to, be evaluated, a
24 record that is inclusive of not only these past 11 months, but
25 of practice of the law in representing not only employers but
26 also injured workers.

27 I close on that, sir.

28 CHAIRMAN LOCKYER: Mr. Johnson, I don't think anyone

1 has any question of your work ethic, personal integrity, or
2 intellect. You clearly are outstanding in those ways.

3 The question has been whether, for whatever reason,
4 work history, or temperament and philosophy, the question's been
5 whether you seemed just to regularly fall on the anti-worker
6 side of these debates. It appears to me, at least based on the
7 information that we have, that there is that pattern.

8 It's very hard, as I'm sure it is for you, everytime
9 you see a case, to make a judgment here about an individual that
10 you prefer not to have to render.

11 We have one week before the final, final deadline,
12 and so I don't know what additional information we could try to
13 uncover that would permit what you regard as a more thorough
14 examination of the record.

15 I mentioned this one statistic earlier of 36 cases in
16 which your written opinions were 35 dissents that ran to the
17 carrier or employer perspective. And while I respect your
18 advocacy, it seems like that's what it is, is misplaced advocacy
19 in a judicial setting.

20 Any questions from Members? What's the pleasure of
21 the panel?

22 SENATOR BEVERLY: Are you suggesting a week's delay?

23 CHAIRMAN LOCKYER: I don't know what we would learn
24 that would benefit, unless there's Members that think there
25 would be some additional benefit.

26 Senators Craven or Beverly, do either care to make a
27 motion?

28 SENATOR CRAVEN: I would like to move the

1 confirmation, Mr. Chairman.

2 CHAIRMAN LOCKYER: That's appropriately before us.
3 Please call the roll.

4 SECRETARY WEBB: Senator Ayala.

5 SENATOR AYALA: No.

6 SECRETARY WEBB: Ayala No. Senator Beverly.

7 SENATOR BEVERLY: Aye.

8 SECRETARY WEBB: Beverly Aye. Senator Petris.

9 SENATOR PETRIS: No.

10 SECRETARY WEBB: Petris No. Senator Craven.

11 SENATOR CRAVEN: Aye.

12 SECRETARY WEBB: Craven Aye. Senator Lockyer.

13 CHAIRMAN LOCKYER: No.

14 SECRETARY WEBB: Lockyer No. Fails two to three.

15 CHAIRMAN LOCKYER: I'm sorry.

16 MR. JOHNSON: Thank you, Senators.

17 [Thereupon this portion of the
18 Senate Rules Committee hearing
19 was terminated at approximately
20 4:55 P.M.]

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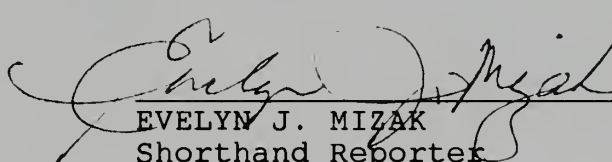
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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chair

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

HEATHER A. CLAYTON, Member
State Board of Education

DONALD R. HILL, Warden
California Correctional Institution at Tehachapi
Department of Corrections

LEON RALPH
Association of Black Correctional Workers

LEWIS N. JONES, Warden
North Kern State Prison at Delano
Department of Corrections

JAMES GOMEZ, Director
Department of Corrections

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--oo0oo--

CHAIRMAN LOCKYER: We have three appointees to visit with today, the first being Heather Clayton, State Board of Education.

Please, if you'll come on up.

MS. CLAYTON: Hello.

CHAIRMAN LOCKYER: Good afternoon.

Do you want to talk for a minute about your job here?

MS. CLAYTON: Sure, I'd love to.

I've been serving unconfirmed on the State Board of Education now since August and having a wonderful time.

I think the experience from my past that has been most valuable in my efforts this past few months has been my involvement with various statewide organizations that have given me experience traveling around the state and seeing the needs of my peers.

I've learned of the importance of incorporating a student perspective into the proceedings on the State Board of Education. I think it's really wonderful that our system is such that we do include student input directly onto the State Board and onto education decisions.

So, I've enjoyed serving and incorporating my first-hand perspective of education into the State Board.

Do you want me to elaborate on any of that?

CHAIRMAN LOCKYER: No, I think that's good.

I think it's commendable that you can get a grade point average higher than straight A also. My compliments. New

1 math?

2 MS. CLAYTON: Exactly.

3 CHAIRMAN LOCKYER: You get extra bonuses.

4 Were you there when the Board recently kind of went
5 off on a detour regarding Alice Walker's writings and things of
6 that sort?

7 MS. CLAYTON: I was.

8 CHAIRMAN LOCKYER: Can you talk about that for a
9 moment and what your thoughts were?

10 MS. CLAYTON: Well, I -- the issue was that there was
11 some material written by Alice Walker removed from the 1993
12 version of the CLAS test.

13 And my feeling is that we should avoid censorship at
14 all costs.

15 It was rather ambiguous about whether or not that was
16 an actual scenario of censorship, and I'm pleased to have voted
17 along with the Board to put Alice Walker's stories back into the
18 pool of possible test items in the future.

19 I think that mostly the reason why the stories were
20 removed in the first place was just because of the breach of
21 confidentiality, and that for the sake of having a safe test and
22 a fair test, that none of the students would have an advantage
23 because they already knew what selections would be used in the
24 test. It was only possible at that point to remove the Alice
25 Walker stories.

26 But I'd hope that in the future, we can incorporate
27 her stories and incorporate a very diverse group of stories in
28 school testing.

1 CHAIRMAN LOCKYER: Questions from colleagues?

2 Senator Ayala.

3 SENATOR AYALA: What was your opinion on the school
4 choice initiative which was defeated by the voters last
5 November? Do you think it's a good move to give everyone a
6 choice of schools and provide public funds for private schools?

7 MS. CLAYTON: I think that I am -- I support
8 definitely the concept of competition. And looking back now on
9 the 174 issue, I see that indirectly, and I don't know if it was
10 intentionally, it really has created some change in education.

11 Frequently now, I'll attend a meeting when someone
12 will say, "You know, we'd better clean up our act because those
13 voucher people might come along again, and we need to be
14 spotless."

15 So, I think it's sort of been an incentive and, you
16 know, a kick to get people going and clean up their acts a
17 little bit better.

18 I think I'd have to agree with my colleague, Gertie
19 Thomas, when she said that she wouldn't support an initiative
20 that didn't dot all of its "i's" and cross all of its "t's".

21 Whether or not 174 did that, I wasn't even 18 yet, so
22 I didn't have to vote.

23 [Laughter.]

24 CHAIRMAN LOCKYER: You're doing very well today.

25 MS. CLAYTON: But I would hope that in the future, if
26 we did have a new voucher-type bill come along, I'd hope that it
27 would dot all its "i's" and cross all of its "t's".

28 SENATOR AYALA: So you feel that closeness of the

1 vote kind of gave an awakening call to the administrators of
2 California that changes are necessary?

3 MS. CLAYTON: I think it definitely did. I think it
4 showed that parents do want to become more involved, which I
5 definitely applaud. I would say that one of the major problems
6 right now in education is that parents aren't involved enough.
7 So, if parents want to be more involved, I say great, and I'd
8 hope that schools have really noticed that there is a need out
9 there for parents to have more opportunities to get involved.

10 SENATOR AYALA: Thank you.

11 CHAIRMAN LOCKYER: Are there other questions?

12 Is there anyone present who'd wish to comment, either
13 for or against the nomination?

14 SENATOR BEVERLY: Move we recommend confirmation.

15 CHAIRMAN LOCKYER: We have a motion by Senator
16 Beverly.

17 Call the roll, please.

18 SECRETARY WEBB: Senator Ayala.

19 SENATOR AYALA: Aye.

20 SECRETARY WEBB: Ayala Aye. Senator Beverly.

21 SENATOR BEVERLY: Aye.

22 SECRETARY WEBB: Beverly Aye. Senator Petris.

23 SENATOR PETRIS: Aye.

24 SECRETARY WEBB: Petris Aye. Senator Craven.
25 Senator Lockyer.

26 CHAIRMAN LOCKYER: Aye.

27 SECRETARY WEBB: Four to zero.

28 CHAIRMAN LOCKYER: Congratulations. Keep up the good

1 work.

2 MS. CLAYTON: Thanks.

3 CHAIRMAN LOCKYER: Don Hill is our next matter.

4 Good afternoon, sir.

5 MR. HILL: Good afternoon.

6 Mr. Chairman, distinguished Members of the Committee,
7 I bring to you today 29 years and 11 months of correctional
8 experience. I've served at five different institutions, two
9 field operations, and I served in Headquarters, Departmental
10 Headquarters.

11 I started my career with the Department of
12 Corrections in 1964 as a correctional officer. I promoted up
13 through the ranks to Captain. At that time, I transferred to
14 our Law Enforcement Liaison Unit as a Special Agent; promoted to
15 a Senior Special Agent. I also coordinated the Prison Gang Task
16 Force for two years; promoted into Correctional Administrator,
17 and I headed up the Department's Investigative Services Unit.

18 I then promoted to Chief Deputy Warden at the
19 Correctional Training Facility in Soledad, and I served there
20 until January of this year, when I was appointed Warden at the
21 California Correctional Institution at Tehachapi.

22 I believe that experience and my accomplishments in
23 the Department, I believe I can serve the people of the State of
24 California well as Warden at the California Correctional
25 Institution at Tehachapi.

26 CHAIRMAN LOCKYER: Thank you, sir.

27 Let me ask if there's anyone present who would wish
28 to comment on the appointment.

1 Are there questions from Members of the Committee?

2 Let me ask about the history of any grievances under
3 your administration. Can you recall, perhaps, whether there
4 have been grievances filed and the results have been when you
5 were in charge?

6 MR. HILL: At Tehachapi, I've only been there three
7 months, and to my knowledge there's been no grievances.

8 CHAIRMAN LOCKYER: Prior?

9 MR. HILL: Are you talking about inmate grievances,
10 or are you talking about staff grievances?

11 CHAIRMAN LOCKYER: Staff.

12 MR. HILL: There certainly have been grievances filed
13 of a minor nature that have been resolved. Some, of course, I
14 may have denied; some, based on the grievance, if it had merit,
15 of course, I would have granted the grievance.

16 I try and look at each one on its own merit.

17 CHAIRMAN LOCKYER: Do you recall whether there were
18 ones claiming discrimination or sexual harassment on your watch,
19 grievances?

20 MR. HILL: Against me?

21 CHAIRMAN LOCKYER: Yes.

22 MR. HILL: No, sir.

23 CHAIRMAN LOCKYER: But perhaps against some other
24 officer, going back to, I guess, the Soledad days?

25 MR. HILL: In the '70s?

26 CHAIRMAN LOCKYER: No, the more recent, while you
27 were a Chief Deputy.

28 MR. HILL: There were allegations of some sexual

1 harassment probably while I was there.

2 CHAIRMAN LOCKYER: How do you think those resolved?

3 MR. HILL: I think they were all resolved positively.

4 If people were guilty of sexually harassing people,
5 we dealt with them very aggressively.

6 I might add that disciplinary action is taken by the
7 Warden rather than the Chief Deputy Warden.

8 CHAIRMAN LOCKYER: So it would go straight up to him.

9 MR. HILL: Yes, sir.

10 CHAIRMAN LOCKYER: It wouldn't be your responsibility
11 to work that out?

12 MR. HILL: The Warden administers adverse actions,
13 yes.

14 CHAIRMAN LOCKYER: So you haven't had to sit on any
15 of those while you've been acting Warden?

16 MR. HILL: I don't recall sitting on any of those for
17 that specific act, anyway.

18 CHAIRMAN LOCKYER: How is Tehachapi in terms of its
19 capacity to do work training? Are there waiting lists, or are
20 you able to accommodate those that are interested?

21 MR. HILL: For inmates?

22 CHAIRMAN LOCKYER: Yes.

23 MR. HILL: We have -- no, I can't accommodate them
24 all.

25 CHAIRMAN LOCKYER: Cannot.

26 MR. HILL: We probably have 35-40 percent
27 nonemployment or not engaged in activities.

28 CHAIRMAN LOCKYER: How much?

1 MR. HILL: Thirty-five to forty percent.

2 CHAIRMAN LOCKYER: And are those the ones that would
3 wish to be in a program, do you think, if they were available?

4 MR. HILL: I would say probably close to that, yes,
5 sir.

6 CHAIRMAN LOCKYER: Mostly they would wish, so you
7 have maybe close to two-thirds that are.

8 MR. HILL: Of some type of --

9 CHAIRMAN LOCKYER: Some sort of a program.

10 MR. HILL: Yes.

11 CHAIRMAN LOCKYER: And then a third or so that are
12 not, a little higher than that that aren't.

13 MR. HILL: Yes.

14 CHAIRMAN LOCKYER: Any thoughts about what works
15 best? What can you do when you have them in your custody to try
16 to not have them come back again?

17 MR. HILL: I think education helps. I think any kind
18 of training program helps.

19 I think that any time you have people in custody, if
20 you have an open line of communication, I think all of that
21 contributes.

22 If you ask me do I have an answer for the crime, no,
23 sir.

24 CHAIRMAN LOCKYER: But just to try to do what you can
25 do while they're in your custody to constrain the amount of
26 re-offending?

27 MR. HILL: I think we have to offer programs for
28 them. Hopefully, by offering the programs of education,

1 vocational training, so that when they got on to the streets,
2 they have a good chance of being productive citizens.

3 CHAIRMAN LOCKYER: Thank you, sir.

4 Other questions? Senator Petris.

5 SENATOR PETRIS: Thank you, Mr. Chairman.

6 What is your overcrowding ratio there at Tehachapi?

7 MR. HILL: I'm at roughly 200 percent.

8 SENATOR PETRIS: Two hundred percent?

9 MR. HILL: Yes, sir.

10 SENATOR PETRIS: Have you tried to estimate what it's
11 going to be when "Three Strikes, You're Out" gets rolling? Have
12 you done a study in your prison, or has anybody?

13 MR. HILL: Not at my prison that I know of. I hope
14 it's not more than 200 percent.

15 SENATOR PETRIS: Two hundred more?

16 MR. HILL: I hope not.

17 CHAIRMAN LOCKYER: You mean to 400 percent, or you'll
18 stay at 200?

19 MR. HILL: I hope not.

20 CHAIRMAN LOCKYER: Well, if I may, Senator --

21 SENATOR PETRIS: Yes.

22 CHAIRMAN LOCKYER: That presumes that the definition
23 of overcrowding is, you should have one per cell, and you've
24 generally got two?

25 MR. HILL: That's correct.

26 CHAIRMAN LOCKYER: It may be we're going to re-do the
27 definition so it will be clear that two is the standard. Then
28 you wouldn't have as much overcrowding, would you?

1 MR. HILL: I'd have a little bit, but not 200
2 percent.

3 CHAIRMAN LOCKYER: Pardon me for interrupting.

4 SENATOR PETRIS: I had a meeting with some people in
5 my district over the weekend, and a couple of very angry
6 citizens demanded to know why we coddled our prisoners the way
7 we do, and give them a lot of luxuries. And they insisted that
8 every prisoner has a color t.v. set in the cell, paid for by the
9 taxpayer.

10 Is that true?

11 MR. HILL: That's incorrect.

12 The state does not give any inmate a color t.v. for
13 his cell.

14 SENATOR PETRIS: Well, I didn't tell them it was
15 incorrect. I told them it was a damn lie --

16 [Laughter.]

17 SENATOR PETRIS: -- and who ever told them that ought
18 to be called to account, because you hear it all the time. You
19 know, you hear a lot of other things, too.

20 So, since you're an official at a high level, I just
21 wanted to confirm, at least as to your prison where you are.
22 How about the rest of them? You have knowledge of the rest,
23 don't you?

24 MR. HILL: I've been at several institutions, and we
25 don't supply t.v.s for every cell, so I would still say it's
26 incorrect.

27 SENATOR PETRIS: Thank you.

28 CHAIRMAN LOCKYER: You do supply?

1 MR. HILL: We do not.

2 CHAIRMAN LOCKYER: Do you supply any?

3 MR. HILL: Any t.v.s, there's t.v.s in a t.v. room,
4 perhaps, for a couple hundred inmates, if they choose to go to
5 the t.v. room.

6 CHAIRMAN LOCKYER: How do they decide what to watch?
7 The big guy named Spike decides?

8 [Laughter.]

9 MR. HILL: They do that by a committee.

10 CHAIRMAN LOCKYER: So, there's collective ones, but
11 not in every cell.

12 MR. HILL: That's correct.

13 CHAIRMAN LOCKYER: Senator Ayala.

14 SENATOR AYALA: I was just going to say that the
15 public perception is that there's a lot of drug and alcohol use
16 within the prison system by the inmates. If it's true in your
17 prison or not, I'm not sure, but if there is, what are you doing
18 to try to eliminate it or eradicate that problem?

19 How is it that we can get drugs and alcohol into the
20 prison system, into the inmates? People don't understand how or
21 why that should happen.

22 MR. HILL: On many occasions, visitors can bring
23 drugs into the institution by secreting it.

24 At Tehachapi, we have a very active program where,
25 when we have information that narcotics is coming in, we secure
26 a search warrant, and we serve many search warrants at our
27 visitor entrance. And if they do in fact have drugs, then
28 they're arrested and placed in jail.

1 SENATOR AYALA: When the visitors come into the gate,
2 and you suspect that perhaps they are carrying drugs or alcohol,
3 you get a search warrant?

4 MR. HILL: Yes, sir.

5 SENATOR AYALA: From whom? Is some judge around to
6 issue that?

7 MR. HILL: A local judge, yes, if we have information
8 ahead of time.

9 SENATOR AYALA: You hold them at the gate until you
10 get a search warrant from the judge?

11 MR. HILL: We get it ahead of time, sir, if we have
12 information that they --

13 SENATOR AYALA: You get a blanket search warrant.

14 MR. HILL: No, sir.

15 If we have information that a subject is bringing in
16 narcotics, then --

17 SENATOR AYALA: You don't have information. Somebody
18 drives up, and you suspect that they might have drugs. Then
19 what?

20 MR. HILL: Unless we have --

21 SENATOR AYALA: A search warrant, you can't do
22 anything.

23 MR. HILL: Well, we can if we have enough information
24 to ask them to be searched, but there has to be some kind of
25 information.

26 SENATOR AYALA: What do you recommend we do besides
27 that to try to eliminate that problem?

28 It's dangerous to the correctional officers, for one

1 thing.

2 MR. HILL: That's true, but I don't think I would
3 want to go so far as to say that we search, unclothed search, of
4 every visitor, sir.

5 SENATOR AYALA: Do you have any other ideas that you
6 feel might work, try it out?

7 I think it's completely wrong that we have people in
8 prison for committing felonies, but they have access to drugs
9 and alcohol from within. It just doesn't make sense to the
10 general public.

11 MR. HILL: And I would have to say that I don't think
12 that the narcotics is as prevalent as perhaps some of the public
13 believes. It does get into the institution. I would not say
14 that it doesn't, but I think we work very actively to defect it
15 and act on it.

16 SENATOR AYALA: You don't think the problem's that
17 serious?

18 MR. HILL: I think if we have any narcotics in the
19 prison, it's serious. I don't want to minimize it, but I think
20 we're handling it very well at this point.

21 CHAIRMAN LOCKYER: The range of levels of security
22 that reflect the need to provide for different kinds of
23 offenders -- minimum, medium, high -- Ones are obviously
24 minimum. What are twos?

25 MR. HILL: Medium.

26 CHAIRMAN LOCKYER: What is distinction between those
27 two categories?

28 MR. HILL: The medium facility has armed towers,

1 double fencing. The minimum security, some minimum facilities
2 have -- do not have armed towers.

3 CHAIRMAN LOCKYER: And how is it that the inmates are
4 different?

5 MR. HILL: By classification score, depending on
6 their commitment offense, their education, how long they've been
7 in, whether they've had disciplinaries. A lot of things account
8 for the score.

9 CHAIRMAN LOCKYER: If you had to kind of, as a rule
10 of thumb, try to perhaps over summarize something that I could
11 understand, how would a One be, maybe, different in an aggregate
12 way from a Two?

13 MR. HILL: Less violent crime, probably.

14 CHAIRMAN LOCKYER: The crime that they committed?

15 MR. HILL: Yes, and perhaps married, more education,
16 a lot of things contribute to it, but less security risk.

17 CHAIRMAN LOCKYER: When you say less, I guess the
18 bulk of our prisoners are still drug offenders?

19 MR. HILL: About 42 percent are violent crimes;
20 probably about 26 percent are drug offenders.

21 CHAIRMAN LOCKYER: Violent meaning armed robbery?

22 MR. HILL: Murder.

23 CHAIRMAN LOCKYER: Assault, and so on, rape.
24 Burglars would be where? Are they in that 42, or are they in
25 the other bundle?

26 MR. HILL: Burglar, if it's strictly a house
27 burglary, they're probably be in the nonviolent.

28 CHAIRMAN LOCKYER: That would be the side they'd fall

1 on?

2 Do you have any thoughts about how we might provide
3 for, let's say, the Level I type prisoner in a less expensive
4 setting? Are there ways to try to accomplish that?

5 MR. HILL: There probably are. I don't think that
6 we've been very successful at doing that in the past.

7 CHAIRMAN LOCKYER: If any light bulbs go off, I hope
8 you'll feel free to call or write.

9 MR. HILL: Yes, sir.

10 CHAIRMAN LOCKYER: Mr. Ralph, did you wish to make a
11 comment?

12 Reverend, nice to see you.

13 MR. RALPH: Thank you, Mr. Chairman.

14 CHAIRMAN LOCKYER: Bishop, pardon me.

15 MR. RALPH: Congratulations, sir. I haven't appeared
16 before a committee that you've chaired in a decade at least.

17 CHAIRMAN LOCKYER: Since you were an Assemblyman,
18 probably.

19 MR. RALPH: Yes, that's right.

20 Mr. Chairman and Members, thank you for the
21 opportunity to appear before you.

22 I appear as a lobbyist for the Association of Black
23 Correctional Workers. We have checked with our membership, and
24 we have certainly no problem with this nomination. Therefore,
25 we are in support of it and would urge confirmation in your
26 wisdom.

27 CHAIRMAN LOCKYER: Thank you.

28 Did I inquire if there is anyone else present who

1 wishes to either support or oppose?

2 What's the pleasure of the Committee?

3 SENATOR PETRIS: Move.

4 CHAIRMAN LOCKYER: We have a motion by Senator
5 Petris.

6 Call the roll.

7 SECRETARY WEBB: Senator Ayala.

8 SENATOR AYALA: Aye.

9 SECRETARY WEBB: Ayala Aye. Senator Beverly.

10 SENATOR BEVERLY: Aye.

11 SECRETARY WEBB: Beverly Aye. Senator Petris.

12 SENATOR PETRIS: Aye.

13 SECRETARY WEBB: Petris Aye. Senator Craven.
14 Senator Lockyer.

15 CHAIRMAN LOCKYER: Aye.

16 SECRETARY WEBB: Four to zero.

17 MR. HILL: Thank you very much.

18 [Applause.]

19 CHAIRMAN LOCKYER: Who are all these people?

20 MR. RALPH: Ex-inmates.

21 CHAIRMAN LOCKYER: You brought inmates with you, I
22 see.

23 [Laughter.]

24 CHAIRMAN LOCKYER: No, no, I'm just teasing. Please
25 don't take offense.

26 Now I guess we have Mr. Jones as the next appointee.

27 [Applause.]

28 CHAIRMAN LOCKYER: You're the one who brought the

1 inmates.

2 [Laughter.]

3 SENATOR AYALA: Can I inquire, Mr. Chairman, who's
4 manning the prison?

5 [Laughter.]

6 CHAIRMAN LOCKYER: Mr. Jones, do you want to start
7 with --

8 MR. JONES: Mr. Chairman, distinguished Committee
9 Members, I'm honored to be afforded the opportunity to appear
10 before you today to explain my qualifications.

11 I have over 20-plus years with the Department of
12 Corrections; 11 of those years has been as a manager: Program
13 Administrator, Associate Warden, Chief Deputy Warden, and New
14 Prison Manager, and also including my new position as Warden at
15 Delano or North Kern State Prison.

16 I began my career in 1968 as a correctional officer
17 at Tehachapi. And thereafter, I left state service and went to
18 work for the War on Poverty as the Executive Director of a tri-
19 county child development day care center for migrant farmworkers
20 and as an emergency food coordinator for a multi-million dollar
21 emergency food program.

22 In '73, I returned to the Department of Corrections
23 as a correctional officer at California Men's Colony; '74, I
24 went to Tehachapi, which is California Correctional Institution.
25 In '75, I was promoted to Correctional Program Supervisor I.
26 Soon thereafter, I took a training and development assignment as
27 a Canteen Manager II, then I was promoted to Soledad as a
28 correctional sergeant.

In '77, I was promoted to Correctional Program

1 Supervisor II at Tehachapi. In '78, I was assigned to the
2 Academy, Correctional Training Academy at Modesto and Norco CRC,
3 California Rehabilitation Center, and I was promoted to
4 Correctional Counselor I.

5 In 1980, I was promoted to correctional lieutenant at
6 California Rehabilitation Center. And then, the latter part of
7 1981, I went to California Correctional Institution at
8 Tehachapi, and I was a disciplinary hearing lieutenant. In
9 1982, I was promoted to Correctional Counselor II. In 1983, I
10 was promoted to Program Administrator.

11 In 1987, I was promoted to Correctional Administrator
12 at Avenal as part of the activation team. In 1988, I was
13 promoted to Chief Deputy Warden at Sierra Conservation Center.
14 In 1989, I returned to Avenal State Prison as Chief Deputy
15 Warden, and in 1990, I was appointed New Prison Manager at
16 Delano Prison, now known as North Kern State Prison. Currently,
17 I've been acting Warden since April of '93.

18 I think that we have a tremendous operation down
19 there, and I think that's a tribute to the staff that work at
20 North Kern State Prison.

21 My formal education includes a Bachelor of Arts
22 degree in political science with a minor in African-American
23 history. I'm a trained hostage negotiation trainer and a
24 conflict resolution trainer.

25 I feel that today's correctional setting requires an
26 administrator that has a diverse background, and I feel I have
27 that diverse background.

28 I don't think that, as administrators, we can lose

1 sight of our primary responsibility, though, and that's
2 protecting the public and ensuring that we retain those people
3 that are sent to us to do their time. I think there's quite a
4 few different ways of accomplishing that, and I think the
5 important areas that I'd like to cover is academic and
6 vocational education program, instilling a work ethic. That's
7 really important. I think religious programs, as well as
8 Narcotics Anonymous and Alcoholics Anonymous -- substance abuse
9 is a big problem in our society, and I think that's something
10 that we should be addressing in the penal setting.

11 I think my management style, and what I try to foster
12 at North Kern State Prison is treatment of people, public
13 safety, and safety and security at the institution. And I think
14 that that philosophy within itself, with the staff there being
15 concerned with how they treat others, it carries on to the
16 inmate population. And I think this instills some expectations
17 with the inmate population in terms of dignity and how we treat
18 other people. And I think that's a tribute, largely, to the
19 lack of violent incidents that we've had at North Kern State
20 Prison this last year.

21 So, I feel, with this Committee's continued support,
22 we can continue to do the outstanding job that North Kern State
23 Prison is doing.

24 CHAIRMAN LOCKYER: Do you know off-hand what the
25 ethnic or gender characteristics are with all the other wardens?
26 Do those come to mind?

27 MR. JONES: Well, I think that we have at least six
28 African-American wardens, and probably six Hispanic wardens.

1 And I think we have one Pacific Islander.

2 CHAIRMAN LOCKYER: Do you have one woman?

3 MR. JONES: We have more than one woman, yes.

4 CHAIRMAN LOCKYER: A warden?

5 MR. JONES: Yes.

6 MR. GOMEZ [from the audience]: It's 28 percent
7 women, 27 percent African-American and 25 percent --

8 CHAIRMAN LOCKYER: These are the wardens?

9 MR. GOMEZ: Wardens. And 25 percent --

10 CHAIRMAN LOCKYER: So, a fourth of the wardens are --

11 MR. GOMEZ: A fourth of them are African-Americans, a
12 fourth are Hispanic, and almost a full third are --

13 CHAIRMAN LOCKYER: Well, you're sort of triple
14 counting, but that's okay; we all do that.

15 But anyhow, a fourth are female, yes.

16 Are there questions? Senator Ayala.

17 SENATOR AYALA: Other than to ask the same question I
18 asked the other gentleman about the drug problem.

19 Is there a problem that you recognize in your prison,
20 or do you think it's a problem but not that difficult to deal
21 with, and what are you doing about it?

22 MR. JONES: Well, Senator, I think any amount of
23 narcotics in a penal institution is too many, too much.

24 What we're doing at North Kern State Prison is, we're
25 actively addressing that problem, knowing that from time to
26 time, narcotics are going to be attempted to be introduced into
27 the prison setting. So, continuous searches, continuous
28 intelligence. And when we find it, we aggressively deal with

1 it.

2 CHAIRMAN LOCKYER: Senator Petris.

3 SENATOR PETRIS: What's your recidivism rate compared
4 to the other institutions?

5 MR. JONES: Well, ours is a reception center, so our
6 primary mission is preparing inmates, as they enter into the
7 system, to go off into other -- other institutions. So, we're a
8 processing unit.

9 SENATOR PETRIS: Don't you have 500 --

10 MR. JONES: We have 500 people that work for us --

11 SENATOR PETRIS: -- that are permanent residents?

12 MR. JONES: -- plus 200 on the outside.

13 I could not give you any statistics, Senator, on our
14 recidivism, because we've only been in activation a year's time.
15 But our work force that we're utilizing to run the institution,
16 the other inmates, is pretty stable, so we've been fortunate in
17 that aspect.

18 SENATOR PETRIS: In the other prisons where you
19 served, what is the pattern when somebody comes back? You know,
20 they go out, and then they commit another crime, or they violate
21 the parole, and come back.

22 Is it the policy of the warden to sit down and have a
23 huddle with that person, who has sworn on ten stacks of Bibles
24 before the board, that they'll never come back, they're going to
25 go straight, and so forth?

26 The public is very concerned about these repeat
27 offenders. That's what the current complaints are all about.

28 MR. JONES: Unfortunately, there are repeat

1 offenders, and that's something that we have to continue to
2 address.

3 As far as wardens sitting down and talking to them,
4 I've walked around the yards as an Associate Warden and as the
5 Chief Deputy Warden, and as a Warden, and talking to inmates who
6 have returned for various reasons.

7 Part of their problem is that they have not accepted
8 responsibility for their own actions. That's something, as a
9 society, we've got to keep educating people to do, because
10 they'll tell you 1,001 reasons why they shouldn't be there, but
11 they forget to say the reason why they're there is they broke
12 the law.

13 I think the problem is that we've got to educate the
14 public to know that if we want a meaningful society, we've got
15 to follow the law.

16 Now yeah, I guess we could sit down and talk to those
17 individuals more, but I think we still got to instill in them
18 that the reason they're there is because of their actions.

19 SENATOR PETRIS: Speaking of education, I notice
20 about 65 percent of the population at Tehachapi is -- I forgot
21 the grade level, but they didn't go very far in school.

22 CHAIRMAN LOCKYER: Fourth grade generally in the
23 whole system.

24 SENATOR PETRIS: Fourth grade in the whole system,
25 actually.

26 Can't we do something about that?

27 MR. JONES: Sure, and we are actively doing that.
28 We've got education programs where we're encouraging inmates to

1 become involved, because part of the reasons, I feel, that
2 people stray off into their own part of the law is because they
3 don't know how to compete in our system. And the reason they
4 don't is because they don't have the education know-all to
5 compete.

6 So, I think if we want to turn things around in this
7 setting, we've got to attempt to educate people. They must
8 learn to read, you know. They must learn to interact into the
9 society as a whole.

10 SENATOR PETRIS: Is learning to read and do other
11 things, up to a certain level, required before anybody's
12 released?

13 MR. JONES: It's not required before anybody's
14 released at this point, but there is an assertive effort to
15 encourage people to participate in education programs, and
16 surprisingly enough, inmates are doing that.

17 SENATOR PETRIS: What percentage?

18 MR. JONES: I don't have those numbers off the top of
19 my head. I could probably say that between our education class
20 and our employment, we've got roughly, out of the 700 people in
21 our workforce, we've probably got 95 percent of those people
22 employed.

23 SENATOR PETRIS: Of course, yours is a little
24 different from the rest.

25 MR. JONES: Right.

26 SENATOR PETRIS: Thank you.

27 CHAIRMAN LOCKYER: Senator Petris had talked earlier
28 about the public opinion, it seems largely uninformed, but that

1 they're country clubs, and they all have these wonderful color
2 t.v.s, and so on.

3 Another comment that you hear regularly, and I'd like
4 to solicit your thoughts about, is: why aren't they working to
5 support the prison operation? That is, why don't they do
6 whatever they would do to bring down the costs by their own
7 labor?

8 Any thoughts about that?

9 MR. JONES: Well, Mr. Chairman, I think we are doing
10 that. The inmates that are engaged in the various work areas at
11 North Kern State Prison are doing work that otherwise we would
12 have had to pay employees to do, so that would have added to the
13 cost of the inmates.

14 CHAIRMAN LOCKYER: The laundry, cooking --

15 MR. JONES: Sure, laundry, the culinary area, and a
16 lot of the clerical positions in our processing in R and R, a
17 lot of clerical positions in our medical department that would
18 have required employing people from the street.

19 CHAIRMAN LOCKYER: Do you have any guesstimate as to
20 how much of the budget, perhaps, would increase, or what it
21 would cost if those were outside employees rather than inmate
22 labor?

23 MR. JONES: Well not -- I would only be guessing, but
24 I'm saying that if you're employing 500 inmates, you know, if
25 you had to change that to an employee from the street, then you
26 would have to hire at least 300 people. So, that would be a
27 significant sum of money.

28 CHAIRMAN LOCKYER: There's a question I want to ask,

1 and maybe one I should have done privately, but I won't see you
2 again, hopefully.

3 [Laughter.]

4 CHAIRMAN LOCKYER: I notice routinely, just on the
5 biographies that come through, where people went to school, and
6 their political affiliation, and their work history, and things
7 of that sort. I'm noticing that it's very rare that we get from
8 the Republican Governor anything other than Rs with respect to
9 that, and I think that's fine.

10 What I'm wondering is, and I don't expect you to
11 answer directly, to try to evaluate any pressure there may be,
12 or expectation that that's what you're supposed to do to succeed
13 in a particular administration, so the only way I know to ask
14 this is: has that always been your orientation, or did you
15 change at some point during your life?

16 MR. JONES: For the last ten or fifteen years it has
17 been.

18 CHAIRMAN LOCKYER: At least the last three Republican
19 Governors.

20 MR. JONES: Has that been 15 years?

21 CHAIRMAN LOCKYER: Well, 12. We're not quite sure
22 what Jerry was.

23 Are there other questions? Senator Petris.

24 SENATOR PETRIS: There's something I forgot that
25 caught my attention.

26 You mentioned doing work with migrant farmworkers.

27 MR. JONES: Yes.

28 SENATOR PETRIS: Did you say day care centers?

MR. JONES: Yes, child development day care centers.

1 SENATOR PETRIS: In which communities were those?

2 MR. JONES: Kings, Kern and Merced Counties.

3 SENATOR PETRIS: Were those state operated?

4 MR. JONES: They were federally funded through OEO
5 grants.

6 SENATOR PETRIS: In the '60s and '70s. Are those
7 still in operation?

8 MR. JONES: The one in Delano still is. I don't know
9 about the other ones.

10 SENATOR PETRIS: Thank you.

11 CHAIRMAN LOCKYER: Bishop Ralph.

12 MR. RALPH: Thank you, Mr. Chairman and Members.

13 Leon Ralph, representing the Association of Black
14 Correctional Workers.

15 We are quite proud at the success that Mr. Jones has
16 achieved within the Department, and we very enthusiastically
17 support his nomination and urge you to ratify it within your
18 wisdom and send it forward.

19 He has, by the way, quite an entourage of people down
20 from his prison. I don't know how many of them are ex-inmates
21 and how many --

22 [Laughter.]

23 MR. RALPH: I'm being facetious.

24 CHAIRMAN LOCKYER: I think we're about to go to a
25 vote, but let me inquire. There could be a whole lot of
26 testimony that I don't think is necessary to achieve the right
27 result, but let me just inquire for the record if there's anyone
28 in opposition that would wish to comment?

1 I know there are numerous supporters present.

2 In the absence of any, and we have none on record
3 whatsoever, I think it would be appropriate to take a motion.

4 SENATOR BEVERLY: Move we recommend confirmation.

5 CHAIRMAN LOCKYER: All right, let's call the roll.

6 SECRETARY WEBB: Senator Ayala.

7 SENATOR AYALA: Aye.

8 SECRETARY WEBB: Ayala Aye. Senator Beverly.

9 SENATOR BEVERLY: Aye.

10 SECRETARY WEBB: Beverly Aye. Senator Petris.

11 SENATOR PETRIS: Aye.

12 SECRETARY WEBB: Petris Aye. Senator Craven.

13 Senator Lockyer.

14 CHAIRMAN LOCKYER: Aye.

15 SECRETARY WEBB: Four to zero.

16 CHAIRMAN LOCKYER: Congratulations, Mr. Jones.

17 [Thereupon this portion of the
18 Senate Rules Committee hearing
19 was terminated at approximately
20 3:15 P.M.]

21 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of April, 1994.


EVELYN J. MIZAK
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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR ROBERT BEVERLY

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JEAN E. ANDERSON, Warden
California Rehabilitation Center, Norco
California Department of Corrections

JAMES GOMEZ, Director
California Department of Corrections

LEON RALPH
Association of Black Correctional Workers

MICHAEL T. PICKETT, Warden
California Medical Facility, Vacaville
California Department of Corrections

MARION J. WOODS, Chairman
Sacramento Chapter
NAACP

LARRY C. WITEK, Warden
California Institution for Men, Chino
California Department of Corrections

APPEARANCES (Continued)

FRANK R. SEARCY, President
Chicano Correctional Workers Association

JOHN VICARIO, Chino Chapter President
Chicano Correctional Workers Association
CIM Officers

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: We have some Governor's appointees, I guess, three Wardens today, beginning with Jean Anderson.

Good afternoon.

MS. ANDERSON: Good afternoon.

CHAIRMAN LOCKYER: Did you want to begin with any opening statement, or would you -- well, we'll let you start it.

MS. ANDERSON: Thank you, Mr. Chairman and Committee Members. It's indeed a pleasure to be here this afternoon to tell you a little bit about myself and why I'm qualified to be a Warden at CRC.

I began my career in 1962 with the L.A. County Probation as a group supervisor. I bring to the Department a very diverse and varied background, working in both adult and juvenile corrections facilities and field operations.

I worked my way through -- up through Associate Warden and also Regional Parole Administrator. In addition, I was the Director of the Consumer Protection in the State of Utah.

I hold a B.A. degree in sociology, and a community college teaching credential in police science.

That's it.

CHAIRMAN LOCKYER: Do you want to, perhaps, tell us your philosophy and thinking with respect to rehabilitation of addicts, and what works and doesn't?

MS. ANDERSON: What works and doesn't work? I think

1 if I knew that, I wouldn't be here. I'd be making money, a lot
2 of money.

3 CHAIRMAN LOCKYER: What should we learn about that?

4 MS. ANDERSON: I think critically for doing anything
5 with addict populations, you have to get at the addict. I think
6 that's why organizations such as N.A. and A.A. have been so
7 successful, because they really get into a person's feeling and
8 try to really change the inner person. That's what you need to
9 emphasize in terms of dealing with the addict population, and to
10 provide consistent and continuity of care in -- from the
11 institution into the parole setting.

12 CHAIRMAN LOCKYER: How successful do you feel that
13 your current program is at doing that?

14 MS. ANDERSON: Currently, the program is in
15 transition at CRC. We have taken a lot of heat in terms of
16 losing some of the glamour and the effectiveness of the program
17 that existed in the '60s, and we are in the process of revamping
18 that program.

19 And I think it will be a program that the Department
20 and the State of California can be very proud of in another six
21 months. Already, we've begun with requiring self-help groups as
22 being mandatory for all civil addict programs -- civil addict
23 commitments. They have to go to a minimum of six weeks and
24 three steps with the self-help groups. We've added the Cocaine
25 Anonymous group to the Narcotics Anonymous and the Alcoholic
26 Anonymous groups. We have increased our numbers of availability
27 for the civil addict program from 250 to 1,000.

28 We have also begun or regenerated our connections

1 with the community, working with Parole Division and also with
2 the L.A. Network to ensure that the out-patient stage for the
3 civil addict program is as good as the in-patient stage is going
4 to be.

5 CHAIRMAN LOCKYER: I guess the Leg. Analyst has been
6 critical of the program?

7 MS. ANDERSON: Yes, he [sic] has.

8 CHAIRMAN LOCKYER: What's currently happened in the
9 budget discussions with respect to those recommendations?

10 MS. ANDERSON: Keep it there, and give us some money.

11 CHAIRMAN LOCKYER: Is that what --

12 MS. ANDERSON: The check's in the mail.

13 CHAIRMAN LOCKYER: Is that what's happened so far in
14 the budget deliberations?

15 MS. ANDERSON: Yes.

16 CHAIRMAN LOCKYER: So, the Analyst's recommendation
17 was not agreed to?

18 MS. ANDERSON: To get rid of an element. Eliminate
19 it, no.

20 CHAIRMAN LOCKYER: Are there questions from Members
21 of the Committee? Senator Ayala.

22 SENATOR AYALA: Yes.

23 I'd like to ask the Warden here, you know, the
24 perception is that drugs and alcohol are abundant within the
25 confines of a prison.

26 Your prison is rehabilitate these folks. Do you have
27 a problem with the drugs and alcohol within the confines of the
28 prison?

1 MS. ANDERSON: Absolutely. And we've taken measures
2 to increase our drug detection within the institution. We have
3 gone out on our own and established a contact with a local dog
4 training facility who trains for all the local law enforcement,
5 and made arrangement for them to come in with the dogs on
6 surprise, twice a month, at no cost to the state. They will be
7 trained by peace officers, and we will do it on a twice monthly
8 basis.

9 Additionally, we have increased our drug detection
10 through our electronic monitoring of inmates' phones, and our
11 recuperating -- not recuperating, but our being able to stop of
12 the drugs coming in from that.

13 We've also added a computer to our visiting center to
14 screen, better screen, our visitors and ensure that no one gets
15 in that shouldn't be in, or is in for any longer period of time
16 than they should be.

17 Additionally, we have done some special training with
18 our Receiving and Release, to a point where they're even
19 opening candy bars to find drugs. And as a result of that
20 extensive training, we stopped, through a package, in the little
21 toffee candies with the little twists, we got 25 bindles of
22 heroin that was coming into the institution.

23 I think we do an excellent job at CRC, and my staff
24 is really dedicated to doing that.

25 We've also established a work group to specifically
26 look at the drug activities in the institution. This will
27 involve -- our criminal activities coordinator will be the
28 chairperson of that group. Additionally, there will include

1 lieutenant and line staff, and we're going to use our trained
2 CERT team who's been trained in drug detection to enhance that.

3 So, I'm real excited about the things that are
4 happening at CRC.

5 SENATOR AYALA: Is there anything you think we can do
6 from the state level to assist you in the security and stopping
7 that traffic?

8 MS. ANDERSON: Yes.

9 SENATOR AYALA: Short of money.

10 MS. ANDERSON: Money would help; money would help
11 tremendously.

12 The current legislation that Senator Presley is going
13 through with the repeal of the Inmate Bill of Rights would be
14 helpful in that regard.

15 CHAIRMAN LOCKYER: Might you comment on literacy
16 programs, and what your observations and experience has been?

17 MS. ANDERSON: I have -- I'm really fortunate,
18 because I've worked both the field operation and also the
19 institution. And we have both in the Parole Division and the
20 institution, there's a literacy program that is very, very
21 beneficial.

22 In the Parole Division, we had actually families
23 going in. I remember one particular family where the parolee
24 was going through our literacy program there, and his mother was
25 so excited about it, she got hooked into it and was getting her
26 GED, and insisted that her son go into the program.

27 In the institution, we run both because we have a
28 space problem. We run a literacy program in the morning and in

1 the evening. And I literally see inmates running to participate
2 in the program.

3 So, it's going very well. I think it's very
4 important, and it's not just literacy, but it builds self-esteem
5 and helps the person feel better about themselves, and they're
6 generally more successful in making it on the streets.

7 CHAIRMAN LOCKYER: Are there waiting lists, or are
8 you handling everyone that --

9 MS. ANDERSON: No, there are waiting lists.

10 CHAIRMAN LOCKYER: How lengthy are they?

11 MS. ANDERSON: More than I'd like to say. There are
12 probably -- I have, for the literacy program, we have about 200
13 on the waiting list.

14 CHAIRMAN LOCKYER: How many are involved in the
15 program at any one time?

16 MS. ANDERSON: Anywhere from 100 to 200 people.

17 CHAIRMAN LOCKYER: So, a lot.

18 MS. ANDERSON: Not enough, not when you have an
19 inmate population of almost 5,000.

20 CHAIRMAN LOCKYER: What would you guess the
21 population need for literacy is, most of them?

22 MS. ANDERSON: I don't know. In terms of what would
23 happen, the civil addict generally tends to have some higher
24 levels of education than your normal felon population.

25 What I'd like to see in terms of CRC is an emphasis
26 not necessarily on education and vocational, but because of this
27 large program, the emphasis needs to be on just that: drug
28 treatment and rehabilitation.

1 SENATOR AYALA: One more question.

2 Is CRC the only institution in California for the
3 rehabilitation of those who are addicted to drugs?

4 MS. ANDERSON: No, it's not. It is the only program
5 in the county where people are civilly committed, as far as I
6 know, but there are other drug programs in the Department of
7 Corrections. We have the Amity Program in RJD. We also have
8 the Forever Free Program at CIW, and in Corcoran we're getting
9 ready to implement another drug program there. And there are
10 various degrees of drug treatment going out to all the
11 institutions in the state, going on.

12 SENATOR AYALA: I notice that the design of bed space
13 and design capacity for CRC is 2,214, and you're housing 5,110.

14 MS. ANDERSON: Well, yes, just like everybody else
15 is.

16 I have an open dorm setting, so we can just keep
17 shoving them in.

18 SENATOR AYALA: Can I ask Director Gomez if we have
19 anything in the pipeline to help the CRC problem there?

20 MR. GOMEZ: Well, we've got a six prison bill that
21 you'll have an opportunity to vote on in the near future.

22 SENATOR AYALA: I'm sorry I asked you.

23 [Laughter.]

24 MS. ANDERSON: You knew it would involve money;
25 right?

26 SENATOR AYALA: Thank you very much.

27 CHAIRMAN LOCKYER: We actually encourage them to
28 adjust the numbers that are used for an overcount, and assume

1 that double celling is the standard, in which case the
2 overcrowding numbers are much less dramatic. That's the ongoing
3 sort of methodological disagreement. We'd like to have some
4 money left for schools in the state ten years from now.

5 How many of your population are the civil commits?

6 MS. ANDERSON: We have over 2500 men and over 700
7 women that are civilly committed now.

8 CHAIRMAN LOCKYER: More than half of --

9 MS. ANDERSON: Yes, the numbers have gone up
10 significantly.

11 CHAIRMAN LOCKYER: Other questions?

12 Are there people here who wish to comment? I think
13 we're ready to vote.

14 Mr. Ralph, you're a supporter, I assume?

15 MR. RALPH: Yes, we are here in support of this
16 nomination.

17 CHAIRMAN LOCKYER: Senator Craven.

18 SENATOR CRAVEN: Move.

19 CHAIRMAN LOCKYER: Senator Craven makes the motion to
20 recommend confirmation to the Floor.

21 Why don't you call the roll.

22 SECRETARY WEBB: Senator Ayala.

23 SENATOR AYALA: Aye.

24 SECRETARY WEBB: Ayala Aye. Senator Beverly.
25 Senator Petris.

26 SENATOR PETRIS: Aye.

27 SECRETARY WEBB: Petris Aye. Senator Craven.

28 SENATOR CRAVEN: Aye.

1 SECRETARY WEBB: Craven Aye. Senator Lockyer.

2 CHAIRMAN LOCKYER: Aye.

3 SECRETARY WEBB: Four to zero.

4 CHAIRMAN LOCKYER: Good luck.

5 MS. ANDERSON: Thank you very much.

6 CHAIRMAN LOCKYER: Our next Warden appointee is Mr.
7 Pickett.

8 Good afternoon, sir.

9 MR. PICKETT: Good afternoon.

10 CHAIRMAN LOCKYER: Did you wish to begin with any
11 opening statement at all, sir?

12 MR. PICKETT: Yes, please.

13 CHAIRMAN LOCKYER: Okay.

14 MR. PICKETT: For the second time that I've been
15 here.

16 To this position I bring with me 25 years in state
17 service with the California Department of Corrections. I began
18 my career in 1969, as a correctional officer at San Quentin, and
19 in the ensuing years have worked my way up through the ranks to
20 my current position.

21 I've worked in our Institutions Division, our Parole
22 Division, and our Investigations Unit, along the way earning my
23 Bachelor's degree in police administration from Cal. State Los
24 Angeles.

25 In 1991, I was promoted to the position of Warden at
26 the California Institution for Men, served in that position
27 until August of last year, when I as transferred to the
28 California Medical Facility, again to assume the vacant position

1 of Warden.

2 I bring with me extensive supervisory and management
3 experience, a proven track record as both a leader and a
4 manager.

5 With the Committee's concurrence and that of the
6 Senate, I hope to continue that.

7 CHAIRMAN LOCKYER: You were with us before for
8 purposes of Chino; was that your last appearance?

9 MR. PICKETT: Yes, sir, that's correct.

10 CHAIRMAN LOCKYER: What do you think, Senator Ayala?
11 You've got to render judgment. How did Chino work out in the
12 last --

13 SENATOR AYALA: Let me say that CIM is within the
14 city limits of the City of Chino.

15 CHAIRMAN LOCKYER: Some think you're on the wrong
16 side of the wall.

17 [Laughter.]

18 CHAIRMAN LOCKYER: Go ahead; keep going.

19 SENATOR AYALA: I want permission to talk to the
20 Chairman after the meeting.

21 [Laughter.]

22 SENATOR AYALA: Let me say seriously that because it
23 is within the City of Chino that the rapport between that
24 institution and the people has to be of the highest caliber.
25 And since Mr. Pickett took over, and now the gentleman coming up
26 next, we've never had better rapport between the community and
27 the institution at CIM. That has to be, because they have to
28 work together.

1 And I want you to know that my office never enjoyed a
2 better relationship since I've been in office than I have with
3 Mr. Pickett and Mr. Witek who's coming up next.

4 CHAIRMAN LOCKYER: That's wonderful.

5 Can't ask for much more than that.

6 MR. PICKETT: I very much appreciate it.

7 CHAIRMAN LOCKYER: Are there other questions from
8 Members of the Committee?

9 You might tell us just again, maybe mostly for our
10 own education, but sort of the differences between the two
11 settings, and what was the most demanding in Chino, and what's
12 the most demanding in your skills in Vacaville?

13 MR. PICKETT: There are some similarities between the
14 two; primarily that both have a hospital, and also that because
15 of the hospital, there's a lot of inmates that congregate at
16 both institutions that need long-term medical care.

17 Both institutions also house a sizable known either
18 HIV or full-blown AIDS population. And again, they're housed
19 there because of the nearness of the hospital and the medical
20 care that those diseases drive in their later stages.

21 After that, the differences are about 180 degrees
22 opposite. Chino is a major reception center, probably the
23 biggest in the state, and processes both new commitments and the
24 majority of the parole violators coming back into the system
25 from Southern California.

26 The California Medical Facility is truly a specialty
27 institution. It houses -- as I've already said, there's about
28 550 beds for housing either HIV or full-blown AIDS inmates. It

1 has about a thousand beds that are dedicated to severely
2 mentally ill inmates who are treated on out-patient basis.
3 There is also a 210 in-patient acute psychiatric hospital that's
4 run by the Department of Mental Health that handles about 150
5 acute psychotics on an in-patient basis, and about 60 as a day
6 treatment.

7 Over and above that, there are about 1,000 beds
8 dedicated to long-term medical inmates who are not actually in
9 the hospital, but again, associate with the institution because
10 of its medical mission.

11 The institution at Chino has 85 acute care hospital
12 beds. Vacaville has 65.

13 In addition to that, I run about 15 million annually
14 in outside medical contracts to provide services that I'm not
15 capable of, or that we don't have doctors on staff to handle.

16 CHAIRMAN LOCKYER: What are those typically?

17 MR. PICKETT: A lot of cancer treatment, anything to
18 do with oncology. I don't have an oncologist on board, so
19 typically, both Chino and Vacaville send those to the outside.
20 We may try and bring the doctor in, but if it requires any kind
21 of extensive out-patient treatment, they end up going outside.

22 CHAIRMAN LOCKYER: Where would you send them?

23 MR. PICKETT: I'm sorry?

24 CHAIRMAN LOCKYER: Where would they go?

25 MR. PICKETT: They go to local hospitals, or to local
26 doctors in the greater either Sacramento -- or, we have a real
27 close tie with U.C. Davis, and we utilize North Bay and Vaca
28 Valley Hospital; they're really one and the same. One's in

1 Fairfield, and the other's in Vacaville.

2 And then there's a pretty sizable community of
3 doctors around the Sacramento-Vacaville-Fairfield area where
4 we're able to provide or find the specialist that we need, and
5 much the same as in the greater Los Angeles area with Chino.

6 Over and above that, any kind of bone doctors that we
7 need, orthopedic work. I don't have an orthopedist on board, so
8 we contract for that. Any kind of heart disease, which is -- as
9 the inmates get older, they're a lot like us, they've abused
10 themselves over the years, so we have a lot of heart disease,
11 and we also contract those out.

12 CHAIRMAN LOCKYER: Do you feel that you're currently
13 doing all that reasonably can be done with respect to the HIV
14 population? Are there additional facilities or program needs in
15 that area?

16 MR. PICKETT: I think we're doing a marvelous job.
17 I've been either with this program or around it since about
18 1985. I was the program administrator that started the first
19 program at Vacaville, and now I've got the joys of having it
20 again.

21 I think we're doing an absolutely great job.

22 One of the key things, I think, is hiring the right
23 kinds of doctors. And I think we've tried to do that at Chino,
24 and we tried to do that at Vacaville. The two lead doctors at
25 Vacaville, that's their specialty. They're internists, but they
26 specialize in infectious disease, so I think that that makes a
27 great difference as far as our credibility with the inmates.

28 The other thing we're trying to do nutritionally is

1 to treat them a lot better as far as the foods we provide, how
2 we provide it, and just kind of an overall better nutritional
3 aspect of what we're trying to provide to this population. So,
4 I think that --

5 CHAIRMAN LOCKYER: Do they have a separate kitchen?
6 Is that how that --

7 MR. PICKETT: We feed them at their own end of the
8 institution. They have their own kitchen. I mean, the food's
9 cooked in the same kitchen that everything else is, but we feed
10 them just at their own end of the building.

11 CHAIRMAN LOCKYER: So, they're separated from the
12 general population?

13 MR. PICKETT: Only in where they live. At Vacaville,
14 we have them situated at the old Northern Reception Center.
15 It's at the east end of the institution. And they live -- they
16 know, everybody knows they down at that end.

17 But other than that, they recreate, they go to the
18 same classrooms, they go to the same jobs. The only job that
19 they're prohibited from holding in the institution is in food
20 service itself, but other than, they're just like any other
21 inmate in the population.

22 CHAIRMAN LOCKYER: Do you have opinions about whether
23 inmates should be prohibited from having exercise equipment?
24 Has that debate reached you?

25 MR. PICKETT: Weights, possibly?

26 CHAIRMAN LOCKYER: Yes, weights. I'm just curious if
27 you have any thought about that, either pro or con?

28 MR. PICKETT: I do. I have somewhat mixed emotions.

1 I've worked in prisons all my adult live. I started out as a
2 correctional officer, so, I mean, I've been out there.

3 These folks are fairly impressive, who sit on the
4 weight piles all day long and exercise in their off hours, and
5 they get rather large. And they -- seems like they come back
6 and they get bigger.

7 From my experience, fortunately, those, for whatever
8 reason, aren't the folks that we have to fight a lot.
9 Typically, it's the other people. At Vacaville, it's usually
10 the ones that suffer from a real serious mental disease that we
11 end up getting into a big knock-down, drag-out fight with, and
12 it's because of the illness that that happens.

13 I think there is some benefit to it. I think that
14 there's also some detractors that -- I'm not quite sure --
15 probably won't be my call how that all ends up, but there are
16 some pros and, I believe, there's also some cons.

17 CHAIRMAN LOCKYER: What would be the cons? Does it
18 prepare them to go out and commit crimes?

19 MR. PICKETT: No, I don't think it either helps one
20 way or the other with going out and committing a crime. I mean,
21 there aren't too many strong-armed robberies any more. Almost
22 everybody's got a gun, it seems like.

23 CHAIRMAN LOCKYER: It's true, or assault weapon.

24 MR. PICKETT: Us and them.

25 I think that it's probably more perception than
26 anything else right now. I think we're in an environment where
27 there's a lot of take-away, and I think that's one of the things
28 that it's a very visual thing. You can see these people.

1 CHAIRMAN LOCKYER: It's some citizens that think
2 they're enjoying some --

3 MR. PICKETT: Too much.

4 CHAIRMAN LOCKYER: Yes, some good treatment, or
5 whatever.

6 But beyond that, in terms of the management of the
7 population, your tilt would be that it helps more than it hurts?

8 MR. PICKETT: It's not only what I think. I think
9 it's basically what I know, if I were to tell you the truth.

10 CHAIRMAN LOCKYER: Yes.

11 MR. PICKETT: And that is that it does help. Either
12 in their off hours, at least I know where they're at. We have
13 very few problems in and around the weight piles. They know if
14 they misbehave there, that we're going to take them.

15 Mine are off limits now, and they will be for awhile,
16 and I mean, that -- it's a management tool for me as a warden,
17 and, I think, for a lot of the others. And I think that we're
18 starting to look at it that way.

19 And quite frankly, they have a tendency not to
20 misbehave when they're out there.

21 CHAIRMAN LOCKYER: Thank you very much.

22 Any other questions from Members? Senator.

23 SENATOR PETRIS: Is there a color t.v. in every cell
24 in your institution?

25 MR. PICKETT: No, there's not.

26 SENATOR PETRIS: I keep getting letters saying, "Get
27 those t.v. sets out of the cells, those color t.v." I just
28 wanted to reconfirm.

1 MR. PICKETT: They are out there, but there is
2 definitely not one in every cell.

3 SENATOR PETRIS: I guess most of them see it in the
4 recreation room whenever they get into it?

5 MR. PICKETT: Well, they're in a number of areas. We
6 -- most institutions have recreation rooms of some type where we
7 do provide a t.v. for those that are indigent and don't have
8 them. Those that either afford them or that we have the right
9 kind of hook-up in the institution, depending on where you're at
10 within the system, and there are differences from prison to
11 prison, or you can have your mother or your father -- they can
12 have them sent in as personal property and have a small one.

13 SENATOR PETRIS: The other part of the letter says,
14 "I'm tired of paying for their color t.v. sets." Taxpayers.

15 MR. PICKETT: Taxpayers aren't paying for them except
16 for the ones that are in the t.v. rooms, and there aren't that
17 many of them.

18 SENATOR PETRIS: Yes, individual cells.

19 MR. PICKETT: The other -- the individual cells, they
20 personally bought those, or their family did and sent them in to
21 them.

22 SENATOR PETRIS: Thank you.

23 CHAIRMAN LOCKYER: How many do you think there are,
24 just estimating, percentage of cells?

25 MR. PICKETT: My guess would be -- and I'd have
26 nothing more than just kind of generally, when you walk through,
27 how many you see is probably 60-70 percent have their own. I
28 mean, there's a large population that have their own t.v. within

1 the institutions.

2 CHAIRMAN LOCKYER: That was true of Chino as well?

3 MR. PICKETT: Yes, yes.

4 CHAIRMAN LOCKYER: No difference in that respect?

5 MR. PICKETT: There may be, you know, a few
6 percentage points difference, but -- well, in fact to Chino, a
7 good portion of them don't, because they're in the Reception
8 Center, and we don't allow them to have anything in the
9 Reception Center.

10 Once they get out of Mr. Witek's Reception Center and
11 go someplace else, then my guess would be somewhere between 60
12 and 80 percent probably have their own t.v.

13 CHAIRMAN LOCKYER: Other questions?

14 Is there anyone present who'd wish to comment? Mr.
15 Ralph, do you want to stand up?

16 MR. RALPH: Mr. Chairman, ABCW supports this
17 nomination.

18 CHAIRMAN LOCKYER: Yes, sir.

19 MR. WOODS: Marion Woods, NAACP.

20 CHAIRMAN LOCKYER: You'd better come up to the mike,
21 I guess. Marion, come up.

22 Just identify yourself for the mike.

23 MR. RALPH: Leon Ralph, representing the Association
24 of Black Correctional Workers.

25 We support this nomination, Mr. Chairman and Members.

26 MR. WOODS: Mr. Chairman, Marion Woods, NAACP,
27 Sacramento Chapter.

28 Both our Sacramento Chapter and the National Chapter

1 support this nomination and Mr. Larry Witek's, who comes up
2 next.

3 CHAIRMAN LOCKYER: Thank you very much.

4 What's the pleasure of the Committee?

5 SENATOR CRAVEN: Move.

6 CHAIRMAN LOCKYER: We have a motion by Senator
7 Craven.

8 Call the roll, please.

9 SECRETARY WEBB: Senator Ayala.

10 SENATOR AYALA: Aye.

11 SECRETARY WEBB: Ayala Aye. Senator Beverly.
12 Senator Petris.

13 SENATOR PETRIS: Aye.

14 SECRETARY WEBB: Petris Aye. Senator Craven.

15 SENATOR CRAVEN: Aye.

16 SECRETARY WEBB: Craven Aye. Senator Lockyer.

17 CHAIRMAN LOCKYER: Aye.

18 SECRETARY WEBB: Four to zero.

19 CHAIRMAN LOCKYER: Warden, good luck. I'm
20 consistently impressed, frankly, by the professionalism
21 exhibited by yourself and the other wardens that we have seen
22 this year. It's a tough job, and it feels like it's in good
23 hands, as much as one can tell from --

24 MR. PICKETT: It's in good hands, thank you. I
25 appreciate that.

26 CHAIRMAN LOCKYER: Our third is Mr. Larry Witek.

27 Good afternoon, sir.

28 MR. WITEK: Good afternoon.

1 CHAIRMAN LOCKYER: Well, you've already had these
2 nice comments made by Senator Ayala. You may want to quit while
3 you're ahead and ask for the vote.

4 [Laughter.]

5 CHAIRMAN LOCKYER: Did you want to begin?

6 MR. WITEK: Sure.

7 CHAIRMAN LOCKYER: Go ahead, sir.

8 MR. WITEK: My name is Larry Witek, and I'm currently
9 the Warden at the California Institution for Men at Chino.

10 I began my career with the California Department of
11 Corrections in 1970 at the California Institution for Men as a
12 correctional officer. I spent approximately 12 years at the
13 California Institution for Men, and during those years, I've
14 promoted from officer to sergeant, to lieutenant, and I was also
15 in the counseling series as Correctional Counselor I, Counselor
16 II, and a Counselor III.

17 In 1982, I promoted to the California Rehabilitation
18 Center as a Correctional Counselor III. During that time at the
19 California Rehabilitation Center, I was also the employee
20 relations officer, and I was also an acting program
21 administrator.

22 In 1984, I transferred to the California Correctional
23 Institution at Tehachapi, and I was a part of the activation
24 team for the Southern Maximum Security Complex and opened up the
25 new Maximum Security at Tehachapi that opened in 1986. I was a
26 correctional captain. I was responsible for the security and
27 the custody of the institution, and responsible for budget
28 packages in establishing that prison.

1 In 1986, I transferred to the Richard J. Donovan
2 Correctional Facility activation team in San Diego. I was a
3 part of the activation of that new prison as a correctional
4 captain. In 1987, when we activated the prison, I was promoted
5 to Associate Warden. I was also a part of the activation --
6 excuse me, also responsible for negotiating with the California
7 Correctional Peace Officers Association, representing management
8 in the activation of that prison and also the prison at
9 Tehachapi.

10 In 1991, I promoted to the California Institution for
11 Men as Chief Deputy Warden. That was at the time Mr. Mike
12 Pickett was the Warden and promoted there, and I was his Chief
13 Deputy Warden.

14 I feel that we were instrumental in making some
15 changes at the prison, and I really appreciate Senator Ayala's
16 comments, because I really feel we worked hard, not only with
17 the staff in the institution, and the management staff, but also
18 with the local community, and the Senator's office and the
19 Assembly's office.

20 Since that time, I worked with Mr. Pickett from
21 '91-93, and then Mr. Pickett promoted to the California Medical
22 Facility -- excuse me, transferred there as a Warden. At that
23 time, August 30th of 1993, I became the acting Warden, and in
24 November was appointed as the Warden at CIM.

25 Thank you.

26 CHAIRMAN LOCKYER: Are there questions? Senator
27 Ayala.

28 SENATOR AYALA: Yes, I've been waiting for this a

1 long time.

2 [Laughter.]

3 SENATOR AYALA: I can't believe that in front of us,
4 to be named a warden at Chino, I remember Larry when he was
5 playing football in high school and before that. And I knew his
6 parents very well. I went to school with his mother. And his
7 father, who is in the audience with his mother and his wife and
8 daughter, Larry Witek, Senior, is a veteran of Marine Corps
9 action in the South Pacific, Senator Craven. Maybe you served
10 at the same time, either at Tarawa or one of those terrible
11 places out there. I didn't know Larry Senior until he came out
12 of the Marines.

13 But I want to ask him, may I ask Larry Senior a
14 question?

15 CHAIRMAN LOCKYER: Sure.

16 SENATOR AYALA: I have a petition here with I don't
17 know how many names support Larry Witek, Junior, for Warden.

18 I just want to ask Larry Senior: how long did it
19 take you to get these signatures?

20 [Laughter.]

21 CHAIRMAN LOCKYER: Actually, they're all the same.
22 It only took an hour or two.

23 [Laughter.]

24 SENATOR AYALA: I know that his folks, and his wife,
25 his daughter, are just as proud as I am to have Larry Witek be
26 named the Warden at CIM.

27 I toured that facility before they brought any
28 prisoners in. I was a senior in high school. Never dreamed a
local boy would someday become the Warden on that institution.

1 So Larry, I'm real proud of you, and I have no
2 comments other than to say that we've worked very well with
3 Larry and his staff, and we look to continue doing that.

4 CHAIRMAN LOCKYER: Well, you've got one vote so far.

5 [Laughter.]

6 CHAIRMAN LOCKYER: You might want to, perhaps,
7 introduce your family. Do you mind?

8 MR. WITEK: No, that would be very nice.

9 This is my wife, Deborah, and my daughter, Kristen.
10 And my father Larry, and my mother Jeanice.

11 CHAIRMAN LOCKYER: Nice to have you all.

12 Are there other questions at all?

13 This isn't one of the major issues of the day, but
14 since it's kind of an opportunity to learn, and it was in my
15 mind, did you have any additional thoughts or observations on
16 weights in the prisons, or t.v.s, since those seem to be
17 currently topical in our environment?

18 MR. WITEK: Well, I think, you know, Mike Pickett,
19 you know, we worked well together, and we have a lot of the same
20 philosophies, and we really grew up in this business, and I grew
21 up in this business as a kid, living on prison grounds. So,
22 I've seen a lot of this.

23 You know, I think the weights, like Mike said,
24 there's some pros and cons to it. Naturally, the public,
25 they're intolerant of seeing -- being victimized and intolerant
26 of crime, and I fully understand that.

27 When you see inmates in pictures, and they look
28 healthy, and they look physically massive, that's not very

1 attractive to the public.

2 When people get victimized, I think it's like Mr.
3 Pickett said. I don't think they're really being victimized in
4 the sense of the muscle and the power; it's the guns, and it's
5 just a blatant disrespect for people.

6 So, the weights in the community -- or excuse me, in
7 the prison, I think we do use them as management tools. If we
8 use them properly, if we have -- use them as a privilege. If we
9 make sure that inmates have to program, they have to do some
10 things before they get to weight piles, if they don't just sit
11 on weight piles during the day when they refuse to behave
12 properly, they refuse to program and do the things that we ask
13 them to do to better themselves, I don't think they deserve
14 weights then. And that's the time that we take it away.

15 And that's the way most wardens and managers handle
16 it.

17 CHAIRMAN LOCKYER: So, it helps in your discipline.

18 MR. WITEK: Sure. It gives us a tool.

19 CHAIRMAN LOCKYER: What other perks, or what other
20 tools do you have like that that you can either take or remove?
21 I mean, obviously good time --

22 MR. WITEK: Well, good time is, if an inmate doesn't
23 program and have some -- then he doesn't earn good time, so
24 that's definitely the biggest benefit for an inmate.

25 CHAIRMAN LOCKYER: What else is there like that? Are
26 there other things that --

27 MR. WITEK: We have privileges such as canteen
28 privileges. If inmates get disciplined, we take that away. If

1 that discipline's related to --

2 CHAIRMAN LOCKYER: And that's --

3 MR. WITEK: That's to go and purchase things. They
4 can purchase some different items.

5 CHAIRMAN LOCKYER: Candy, and cigarettes, and stuff
6 like that?

7 MR. WITEK: Right.

8 CHAIRMAN LOCKYER: So, they might have that withheld.

9 MR. WITEK: You bet.

10 CHAIRMAN LOCKYER: That's kind of the list, sort of,
11 other than the negative side of things, the punishment side?

12 MR. WITEK: Yeah, if it's -- yeah, phone calls. If
13 it's related to visiting, we can take away visiting privileges,
14 those types of things.

15 CHAIRMAN LOCKYER: Other questions? Yes, Senator
16 Ayala.

17 SENATOR AYALA: Warden Witek, you may recall, we had
18 a real problem with an escapee from Chino that went out into the
19 hills and created a problem by murdering four or five people. I
20 don't recall how many.

21 At that time, the rationale given to us for not
22 knowing that this individual was a dangerous individual is that
23 he arrived from Los Angeles County Jail and his jacket didn't
24 arrive with him. They didn't know what kind of a person he was,
25 and so he was put out in the minimum security, and he took off.

26 Has that been corrected, the fact that the inmate and
27 the jacket arrive together so they know who they have in front
28 of them before they turn him loose?

1 MR. WITEK: Inmates now don't go directly to minimum
2 custody until we fully screen them, and we have all the wants
3 and warrants checked and cleared.

4 Normally, most inmates are transferred to other
5 institutions out of the Reception Centers. The ones that we do
6 move into the minimum custody now, we still put them into a more
7 controlled setting until we're -- they're fully cleared.

8 At that time, I believe, they were processing inmates
9 somewhere in a timeframe of 11-15 days, and they were moving
10 them rather rapidly. And today, we're taking 30-45 days, and we
11 make sure that we get clear wants and warrants on an inmate
12 before we move them out. So, that would prohibit an inmate from
13 another state, that happening.

14 SENATOR AYALA: Thank you.

15 CHAIRMAN LOCKYER: What would you say is the hardest
16 part of your job?

17 MR. WITEK: The hardest part of my job is the -- I
18 think it's the managing of the employees, the training, the
19 developing, the overcrowding, the budget reductions. There's a
20 number. All of those things collectively, but the overcrowding
21 and the budget reductions are probably right at the top.

22 CHAIRMAN LOCKYER: You sort of have a chance, here's
23 four Senators, and probably there have been occasions that, "I'd
24 like to tell those folks something."

25 What is the "something" that you had, on occasion,
26 wished to let us know about?

27 We'll vote first, if you want.

28 [Laughter.]

1 MR. WITEK: Mark your votes down so you don't change
2 them.

3 [Laughter.]

4 CHAIRMAN LOCKYER: But, you know, I think we all
5 learn from this exchange of information.

6 MR. WITEK: Well, I think the Department of
7 Corrections is changing ever so rapidly. When I started, there
8 was somewhere in the vicinity of 20,000 inmates, and we're up to
9 120,000. We're looking at "3 Strikes, You're Out", you're
10 looking at over 200,000 in the next five years.

11 I think, you know, the Director of Corrections, I
12 think, does an excellent job. I think where we're headed today,
13 we've done a lot of things, and that's not a plug. I'm telling
14 you that truthfully, how I see the Department of Corrections.
15 We've made a lot of changes today, and a lot of things are
16 happening, a lot of good things.

17 We're taking people in the Department that don't have
18 near the experience that we used to have in our Department.
19 When I started, there were many veterans, people with 20-plus
20 years, that helped me learn, helped Mike Pickett learn. Those
21 people are slowly disseminating and we don't have them anymore.

22 What we have to do now is, we have to train staff,
23 really accelerate them and bring them on faster. And get them
24 more up to speed in what's going on. We have to treat people
25 better. We've got a lot of things happening, sexual
26 harassment, different things that are going on in all arenas.

27 In the Department of Corrections, we've taken some
28 real strong stands, and I think we've done some very good things
in those areas. And I think that just the sensitivity of

1 knowing that, and the arena, how difficult it is to manage.

2 CHAIRMAN LOCKYER: So, the quality of the
3 environment, and the program, is different than when you were
4 first starting out?

5 MR. WITEK: Much more sophisticated and, I think, the
6 staff are better trained. A lot of good things are happening.

7 CHAIRMAN LOCKYER: What's the pleasure -- did anyone
8 wish to comment? Yes.

9 MR. RALPH: Mr. Chairman, Members, ABCW supports this
10 nomination.

11 Thank you.

12 CHAIRMAN LOCKYER: Thank you.

13 MR. SEARCY: Mr. Chairman, Committee, I am Frank R.
14 Searcy, President of the Chicano Correctional Workers
15 Association.

16 With great pleasure, I am here today to offer this
17 Association's endorsement of Mr. Witek for Warden.

18 I had about a three-hour presentation all ready;
19 however, Mr. Witek said it all in a few words, so I really don't
20 have to say anything.

21 However, even though Mr. Ayala also made some good
22 comments, one thing that has not been said, and I think this
23 Association at this time wants to offer this, that Mr. Witek is
24 a very, very effective administrator. That goes without
25 question.

26 SENATOR AYALA: I thought I said that.

27 [Laughter.]

28 MR. SEARCY: Just to back that up, a few weeks ago,

1 when this issue came up to our Board of Directors of were we
2 going to support Mr. Witek, the discussion was very minimal, and
3 the vote for yes was overwhelming immediately.

4 So, gentlemen, ladies and gentlemen, again, I'd like
5 to offer this Association's endorsement for Mr. Witek as Warden
6 at the California Institution for Men at Chino.

7 Thank you.

8 CHAIRMAN LOCKYER: Thank you very much.

9 MR. VICARIO: Ladies and gentlemen, my name is John
10 Vicario. I'm the Chino Chapter President of CCWA, who initiated
11 the endorsement of Mr. Witek's confirmation.

12 I've been sent by a contingency or a contingent of
13 officers, not CCWA members, who felt that someone should go or
14 should come here and voice their support for Mr. Witek.

15 CHAIRMAN LOCKYER: Is that your petition?

16 MR. VICARIO: No, and I'm glad now that we didn't do
17 that after all.

18 [Laughter.]

19 MR. VICARIO: Things got kind of hectic, so we didn't
20 get into that. But if we would have had a couple more days, we
21 would have presented another one.

22 Again, I'd like to voice our support for Mr. Witek's
23 confirmation.

24 Thank you.

25 CHAIRMAN LOCKYER: Thank you very much.

26 Senator Ayala moves confirmation, I think.

27 SENATOR AYALA: I take honor in doing that,
28 supporting the nomination of Mr. Witek as the Warden at the

1 California Institution for Men at Chino. I'm real proud of that
2 motion.

3 CHAIRMAN LOCKYER: Well, it's one aye and three noes.

4 [Laughter.]

5 CHAIRMAN LOCKYER: Call the roll, please.

6 SECRETARY WEBB: Senator Ayala.

7 SENATOR AYALA: Aye.

8 SECRETARY WEBB: Ayala Aye. Senator Beverly.
9 Senator Petris.

10 SENATOR PETRIS: Aye.

11 SECRETARY WEBB: Petris Aye. Senator Craven.

12 SENATOR CRAVEN: Aye.

13 SECRETARY WEBB: Craven Aye. Senator Lockyer.

14 CHAIRMAN LOCKYER: Aye.

15 SECRETARY WEBB: Four to zero.

16 CHAIRMAN LOCKYER: Good luck.

17 MR. WITEK: Thanks to all of you very much.

18 [Thereupon this portion of the
19 Senate Rules Committee hearing
20 was terminated at approximately
21 2:45 P.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of June, 1994.


EVELYN J. MIZAK
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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chair

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

GARY MENDOZA, Commissioner
Department of Corporations

STEVEN THOMPSON
California Medical Association

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--oo0oo--

CHAIRMAN LOCKYER: Well, I guess we ought to go to Mr. Mendoza.

Good afternoon.

MR. MENDOZA: Good afternoon, Mr. Chairman.

CHAIRMAN LOCKYER: Did you want to start with any opening statement at all?

MR. MENDOZA: Sure.

My name is Gary Mendoza. In July, 1993, the Governor appointed me Commissioner of Corporations.

I believe that by virtue of my educational background, my experience, and my temperament, that I can be and have been an effective Commissioner of the Department of Corporations.

At the time Governor Wilson appointed me Commissioner of Corporations, I was a practicing corporate lawyer with the firm of Reardon and MacKenzie, and during my private practice, got a lot of experience in corporate securities laws, which is one of the more significant aspects of the Department's jurisdiction.

Before I attended Yale Law School, I was a certified public accountant. And in order to be an effective certified public accountant, an effective corporate lawyer, you need to understand the problems that your business clients are facing, and you need to understand their business. And I think to be an effective Corporations Commissioner, it's important to understand the businesses that you're responsible for

1 regulating. And I think my experience as an accountant and as a
2 corporate lawyer have prepared me well for that aspect of my
3 position.

4 I think also to be an effective accountant and an
5 effective lawyer, you need to be a good listener, and I don't
6 believe that I have a monopoly on good ideas. And I've made it
7 a practice during my last ten months as Commissioner to reach
8 out to a broad cross-section of those people who live under our
9 regulatory regime or who are affected by our regulatory rules,
10 to get the broadest input as possible.

11 And also, I think that I have a keen appreciation of
12 the state's interest in balancing the need for consumer and
13 investor protection against the state's need to reinvigorate the
14 California economy, and we've been pursuing a number of things
15 during my ten-month tenure to date along those lines.

16 CHAIRMAN LOCKYER: Any particular issues that's been
17 the most difficult during your tenure?

18 MR. MENDOZA: I think we've been very active in the
19 health care area. We have a series of initiatives under way to
20 try and work to continue to improve the quality of health care
21 provided by California's health care service plans.

22 I think we've taken a number of actions in the
23 securities area, both legislatively -- we have a bill that's
24 currently was passed out of the Senate last week to provide for
25 new exemption from qualification which we believe will make it
26 easier for small businesses to access the capital markets.

27 We've also had to bring a number of enforcement
28 actions for people who have fallen out of line and have violated

1 securities laws. We're trying to do that in a way to draw
2 attention to the consuming -- to the investing public with
3 respect to the investment frauds out there. And we've been, I
4 think, successful in getting our message out to the investment
5 public that, you know, we can do a lot to protect them, but we
6 can't do as much as they can to protect themselves.

7 We've been active with the lenders industry, to try
8 and put together a bill to consolidate the three lenders laws
9 that Assemblyman Caldera is carrying that was made a committee
10 bill when it was heard in his committee. It would streamline,
11 we believe, the regulatory burdens put on the industry without
12 compromising the protections afforded the consuming public.

13 There's just been a broad -- you know, it's been a
14 very active ten months in the Department, but fortunately, I
15 think I've got very strong people to work with, and I've also
16 been able, as I said, to reach out to a number of people in the
17 private sector to get the benefit of their input.

18 CHAIRMAN LOCKYER: Senator Petris, are you jumping
19 in?

20 SENATOR PETRIS: At the proper time.

21 CHAIRMAN LOCKYER: Now is proper.

22 SENATOR PETRIS: I wanted to ask about the Blue Cross
23 \$1 billion foundation.

24 You mentioned at the outset that you feel you have
25 the temperament to be Commissioner of Corporations. What is the
26 nature of the temperament that enables you to get such a
27 tremendous concession out of this huge corporation, other than
28 the fact that they're under your jurisdiction?

1 MR. MENDOZA: Well, I think almost from the moment I
2 arrived at the Department, we've been working with Blue Cross to
3 get them to put forward a plan to use all of their assets for
4 the benefit of the public. And we had a series of meetings over
5 the last 8-10 months with that in mind.

6 I think we've steadily kept the focus on that. I
7 think we've made it clear to Blue Cross what we think is
8 appropriate.

9 Two weeks ago, they put forward the first step along
10 the path we'd like them to go down, in which they committed to
11 contribute \$100 million to charities this year, and to put
12 forward a plan within the next several months to use all of
13 their assets to the benefit of the public.

14 So, I think we've been, you know, focused on this
15 issue, and we've worked with them, and I think we've -- they
16 understand what are expectations are. I believe they will put
17 forward a plan that meets those expectations, although we still
18 have to see the plan, and we want to work with them in the
19 development of it.

20 SENATOR PETRIS: Are you the one that initiated that
21 after the Isenberg legislation started to move?

22 MR. MENDOZA: The Department at the time of their
23 restructuring application did raise a question with respect to
24 what the restructuring would do to Blue Cross's ability to meet
25 its charitable responsibilities.

26 In April, 1993, before I arrived at the Department,
27 we sent a letter to Blue Cross, asking them for their
28 comprehensive public benefit plan. When I arrived at the

1 Department, we had not yet received that plan. I sent a series
2 of letters to Blue Cross, asking them for that plan.

3 The plans that they ultimately submitted were
4 inadequate, and we told them that they were inadequate, and now
5 I think they understand what we are looking for in their
6 comprehensive plan. I expect that they will put forward a
7 comprehensive plan that will -- that we're going to take under
8 submission and very carefully scrutinize, but I think we have a
9 clear understanding, at least in our internal minds, with
10 respect to what we are looking for, and I think we communicated
11 that to Blue Cross.

12 SENATOR PETRIS: Well, the reason I asked, I was very
13 impressed when I read about this in the newspaper. They're
14 required to spend \$100 million in 1994, and I guess there'll be
15 some more in the future, I don't know.

16 It's not uncommon, is it, when a nonprofit
17 corporation of considerable impact decides to go private, that
18 the Department can impose whatever conditions it wants that are
19 reasonable, that is, before granting approval.

20 MR. MENDOZA: Right.

21 SENATOR PETRIS: And I suppose that's done from time
22 to time, but I don't remember any case that got this kind of
23 publicity, based on the magnitude that we're talking about here.

24 MR. MENDOZA: I think in Blue Cross's case, they had
25 substantial amount of assets to be put to public purposes, and I
26 want to make certain that they do use those assets for the
27 benefit of the public. And we've made that clear to Blue Cross,
28 and they've made a submission two weeks ago that recognizes our

1 interest in that.

2 I think the reason you've not seen a matter of this
3 size, frankly, I don't think there has been one of this
4 magnitude.

5 But I think that Blue Cross understands what we would
6 like to see in a comprehensive benefit plan. They have
7 committed to presenting a plan to us within the next several
8 months on how they're going to use all of their assets for the
9 benefit of the public.

10 And the \$100 million commitment that they made two
11 weeks ago is an important interim step.

12 SENATOR PETRIS: When I was carrying a single-pay
13 health plan two or three years in a row, the response from the
14 industry was that it was too costly for them, and they're barely
15 hanging on, and they're not making much money, which we found to
16 be untrue generally across the board.

17 I remember that Blue Cross, the prior year, had made
18 \$900 million just in one year in profit. It doesn't show like a
19 private corporation would because it's a nonprofit and comes
20 under a different category, but those are the numbers that were
21 published in the press.

22 I made a kind of a mental note at the time that this
23 is a pretty big operation, and if we could turn it a little more
24 in the direction of a public benefit, it would be very helpful.
25 That's why I applauded the steps that you're taking.

26 Now, from that \$1 billion foundation, is there some
27 annual amount that they're now going to be required to expend,
28 or are you waiting for a plan to be approved?

1 MR. MENDOZA: What they've committed to do at this
2 point is to contribute \$100 million to charities in 1994, and
3 then present to the Department a comprehensive plan to use all
4 of their assets for the benefit of the public. And currently --

5 SENATOR PETRIS: Excuse me.

6 Are these contributions in the health field?

7 MR. MENDOZA: Yes, they are.

8 SENATOR PETRIS: It would be to nonprofit hospitals
9 and --

10 MR. MENDOZA: They designated \$25 million of it
11 already: \$10 million is going to go to the Poison Centers, the
12 State Poison Center; they're going to make contributions to the
13 children's hospitals; they're going to make contributions to a
14 number of clearly charitable pediatric charitable health care
15 activities.

16 So, I think the money that they've designated is
17 clearly public benefit use of those assets. And they have
18 committed to designate an additional \$75 million in the next
19 several months, and we're going to closely look at the
20 designated beneficiaries of that money to make certain that
21 we're satisfied that it is an appropriate -- the beneficiaries
22 are appropriate public benefit beneficiaries.

23 And with respect to the comprehensive plan that they
24 have committed to submit, Blue Cross holds stock that is -- has
25 a market value of about \$2.6 billion. That's the WellPoint
26 stock. And they've committed to present the plan, a
27 comprehensive plan to use all of their assets for the benefit of
28 the public.

1 The \$1 billion number that you've seen reported is a
2 suggestion that I had previously made to the Board of Blue Cross
3 with respect to the establishment of a foundation in a letter
4 that I sent to Blue Cross, which someone leaked to the press.
5 It wasn't anybody at the Department -- we certainly didn't want
6 to do that -- but someone did leak it to the press. So that the
7 \$1 billion that the press has reported with respect to the
8 foundation is one suggestion I made as to what I think might be
9 an appropriate component of their comprehensive public benefit
10 plan.

11 SENATOR PETRIS: Well, I've lost my train of thought.
12 Oh, yes, it was on the Poison Centers.

13 Last week there was something in the press that
14 they're closing down all over the country in large numbers, not
15 that we have that many. And we've been fighting very hard to
16 keep those open here in California.

17 So did the Department direct them, direct their
18 attention to help the Poison Centers here?

19 MR. MENDOZA: Well, early, during the -- earlier this
20 year, when they began to designate who they might think would be
21 appropriate beneficiaries of their contributions, at that time
22 they were talking about contributions on the level of \$25-35
23 million this year, and the Poison Centers was among the list of
24 beneficiaries. So, that was Blue Cross's idea.

25 SENATOR PETRIS: Thanks.

26 CHAIRMAN LOCKYER: When you say all of their assets,
27 does that mean it'll be higher than a billion?

28 MR. MENDOZA: They're committed to presenting to use

1 all of their assets to the benefit of the public. That doesn't
2 mean they're going to contribute all of their assets to a
3 charitable foundation, but they're going to develop a plan to
4 use all of their assets for the benefit of the public.

5 CHAIRMAN LOCKYER: What would that mean?

6 MR. MENDOZA: They could do a number of things. They
7 could contribute all to a foundation. I'm not sure that's what
8 they'll do. They could say, we're going to expand our nonprofit
9 operating activities, and we're going to use that stock to help
10 finance that activity.

11 CHAIRMAN LOCKYER: What would that be like?

12 MR. MENDOZA: I'm sometimes speculating.

13 CHAIRMAN LOCKYER: Sure.

14 MR. MENDOZA: They could say, we're going to buy a
15 number of free-standing clinical hospitals in low-income
16 neighborhoods, and we're going to staff them up, and we're going
17 to provide health care to medically underserved populations.

18 I think that the types of things that they could do
19 is a pretty broad spectrum of things, because I think there's a
20 lot of unmet needs in the health care area in the State of
21 California.

22 CHAIRMAN LOCKYER: Do you feel confident that
23 commitment will be met?

24 MR. MENDOZA: They made a commitment to the
25 Department in the undertaking to present a comprehensive plan to
26 use all of their assets, and they certainly understand that
27 that's what the Department's expectation is.

28 CHAIRMAN LOCKYER: Do you still have some leverage

1 with them? Are they awaiting some approval?

2 MR. MENDOZA: Well, I think we have ongoing
3 responsibility to monitor their public benefit activities.

4 In the case of nonprofit companies that are licensed
5 as Knox-Keene Act plans, we stand in the shoes of the Attorney
6 General. So, our jurisdiction in this regard is ongoing.

7 CHAIRMAN LOCKYER: But you approved their
8 reorganization.

9 MR. MENDOZA: We approved their restructuring, and we
10 concluded at that time that it was not a conversion, and we
11 continue to believe that it was not a conversion, but the
12 restructuring did not end their nonprofit public benefit
13 responsibilities. They still have the obligation to act in the
14 public interest with respect to the use of their assets. And I
15 think working with them, we're going to come up with a
16 comprehensive plan to address that.

17 CHAIRMAN LOCKYER: Why is it not a conversion?

18 MR. MENDOZA: Because they retained nonprofit control
19 of those assets.

20 The assets were held originally by Blue Cross, and
21 they shuffled them around, and they ended up being held by a
22 for-profit company that Blue Cross now owns 80 percent of. They
23 used to own 100 percent of those assets, then they sold 20
24 percent to the public, and they ended up owning 80 percent of
25 those assets plus \$500 million, which is what the company got.

26 So, they didn't take the ownership of the assets
27 outside of the nonprofit charitable umbrella as a part of the
28 restructuring, so that's why it wasn't a conversion.

1 CHAIRMAN LOCKYER: Senator Ayala.

2 SENATOR AYALA: Mr. Mendoza, your Department gets
3 involved with the regulations involving the financial planners.

4 Do you think that these folks are trained well
5 enough? Do you think that the laws require them to protect,
6 really, the public from abuse from these financial planners? Do
7 you think the laws and regulations are sufficient to protect the
8 consumer?

9 MR. MENDOZA: Well, currently our activity with
10 respect to financial planners is associated with our regulation
11 of investment advisors and brokered dealers.

12 Senator Killea has a bill that she is working on to
13 give us additional jurisdiction with respect to financial
14 planners.

15 SENATOR AYALA: Where is that bill now?

16 MR. MENDOZA: I think it's still in her committee; I
17 think it's still in her committee.

18 I think that generally, the oversight of that
19 activity has worked well with respect to brokered dealers and
20 investment advisors, although there have been some significant
21 problems. One of the more significant problems that we had to
22 face during the early part of my tenure was the Prudential
23 limited partnership.

24 SENATOR AYALA: That bill requires the so-called
25 planners to disclose to the clients a minimum amount of
26 background, knowledge, and so forth.

27 Do you support that?

28 MR. MENDOZA: I believe that disclosure is an

1 important part of consumer protection, so we certainly would
2 support that.

3 SENATOR AYALA: That bill would do that; wouldn't it?

4 MR. MENDOZA: I think that's right.

5 I think we want to make certain that we -- that the
6 financial planner bill works in concert with our brokered dealer
7 and investment advisor activities, and that if we're given
8 responsibility for regulating financial planners, that we have a
9 substantive law that makes sense and the enforcement tools
10 necessary to enforce that law if financial planners who are
11 licensed by the Department of Corporations --

12 SENATOR AYALA: Currently, there's nothing out there
13 for you to --

14 MR. MENDOZA: Currently no. Currently, financial
15 planners are not regulated, to the extent they are,
16 quote-unquote, "financial planners". Many of them are
17 investment advisors, and they're regulated under our investment
18 advisor act, and many of them may be brokered dealers and they
19 would be regulated as brokered dealers. But financial planners
20 themselves are not a regulated industry in the Department's
21 jurisdiction.

22 CHAIRMAN LOCKYER: Part of your responsibility is to
23 supervise administrative and profit taking in HMOs that deal
24 with worker comp. I guess you have the 15 percent regulation
25 that would only allow overhead of 15 percent that is in profit
26 or administrative.

27 Now, the Medical Association has done a report, and I
28 guess numerous others, pointing out the difference among

1 providers. As I recall, something like 40 percent of them
2 exceed 15 percent, the largest being the one that we've been
3 talking about, or at least I think the largest; that is, 30
4 percent overhead and profit, compared to Kaiser, which is under
5 5 percent. You have 600 percent differences among plans.

6 What are your thoughts about what you might do about
7 that?

8 MR. MENDOZA: Currently, we don't regulate for
9 profits of HMOs. Our 15 percent cap applies for administrative
10 and overhead costs, principally marketing and SIGNA.

11 I think it's important that the Knox-Keene licensees
12 meet their responsibilities to the enrollees that they serve,
13 and we do take a look at there administrative costs. For the
14 most part, those plans that have administrative costs in excess
15 of 15 percent are smaller plans that have less of an early basis
16 to spread their costs around, or plans with fairly aggressive
17 marketing plans and expansion of business plans.

18 So, we take a look at that, but we don't prohibit --
19 we don't say that if you have administrative costs in excess of
20 15 percent, that it is a violation of our regulations, but we
21 certainly look for a legitimate business explanation as to why
22 those overhead costs do exceed 15 percent. And for the most,
23 the instances that we've looked at, it's a result of newer
24 plans, smaller plans, or plans with aggressive expansion plans.

25 CHAIRMAN LOCKYER: Which is it in the case of
26 WellPoint? Newer?

27 MR. MENDOZA: I think that --

28 CHAIRMAN LOCKYER: It's certainly not small.

1 MR. MENDOZA: No, no.

2 Well, WellPoint is -- WellPoint's not one of our
3 licensees. WellPoint's a holding company. So, I don't know --
4 WellPoint doesn't report those numbers to us.

5 CHAIRMAN LOCKYER: They're at 30 percent plus in the
6 CMA study.

7 MR. MENDOZA: I think a big part of that includes
8 profits.

9 CHAIRMAN LOCKYER: Yes, that could be.

10 MR. MENDOZA: And I think they do have a fairly --
11 they have been fairly profitable in the last year. They're
12 fairly profitable. So, I think the big difference between the
13 15 percent and the number that CMA reported is probably profits.

14 CHAIRMAN LOCKYER: Is there anyone present that
15 wanted to make any public comment? Mr. Thompson.

16 MR. THOMPSON: Mr. Pro Tem, Senators, my name is
17 Steve Thompson. I represent the California Medical Association.

18 We are here to support the confirmation of
19 Mr. Mendoza. We have found, while not always in agreement with
20 Mr. Mendoza and the decisions of the Department of Corporations,
21 in the last ten months there's been an open door. There's been
22 reflection, analysis, and intelligence that we figure did not
23 sit in that office previously.

24 Mr. Mendoza represents, coming from the private
25 sector, I think, the best of public service that we all hope for
26 when we find appointees. And while there will continue to be
27 some disagreements with this department, we feel that we have,
28 in a sense, a very fair and open administrator.

1 Thank you.

2 CHAIRMAN LOCKYER: What's the pleasure of the
3 Committee?

4 SENATOR AYALA: Move.

5 CHAIRMAN LOCKYER: Motion by Senator Ayala. Call the
6 roll, please.

7 SECRETARY WEBB: Senator Ayala.

8 SENATOR AYALA: Aye.

9 SECRETARY WEBB: Ayala Aye. Senator Beverly.
10 Senator Petris.

11 SENATOR PETRIS: Aye.

12 SECRETARY WEBB: Petris Aye. Senator Craven.
13 Senator Lockyer.

14 CHAIRMAN LOCKYER: Aye.

15 SECRETARY WEBB: Three to zero.

16 CHAIRMAN LOCKYER: Thank you, good luck.

17 MR. MENDOZA: Thank you.

18 [Thereupon this portion of the
19 Senate Rules Committee hearing
20 was terminated at approximately
21 2:47 P.M.]

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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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Shorthand Reporter

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